

UNITED STATES HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE DEMOCRATIC FORUM

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PRESERVING DEMOCRACY -- WHAT WENT WRONG IN OHIO?

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P R O C E E D I N G S

MR. CONYERS: The hearing will come to order.

There are other colleagues joining me, but I'm happy to have next to me Jerry Nadler of New York, Bobby Scott of West Virginia--Bobby Scott of Virginia, not West Virginia; members who have worked on the issue of preserving democracy and how we make the voting process more consistent with what we all expect it to be.

I thank everyone for coming. There's been a lot of work, a lot of people making contributions, thousands and thousands of emails, letters, calls still coming in. I want to commend the media, which has done an excellent job in making sure that we all hear about this.

We're going to have abbreviated opening statements, because many of our witnesses are on time frames, and so I've asked all of my colleagues to not speak any longer than myself, which is going to be limited to two minutes right now.

Look: in this country, every vote counts.

It doesn't make a difference if it's close or not close. It doesn't matter whether the votes have been certified or the Electoral College has met. The concept behind a democratic society in this nation, under this Constitution, is that every vote must count. We've been working between two flawed Presidential elections and a Federal Help America Vote Act, and we still haven't gotten there, if the testimony that we're going to hear is valid today.

We're concentrating on Ohio, because that's where most of the complaints came from, but they did come from many other states. And so, we're here today to begin this journey of preserving democracy. What went wrong? What were the irregularities? And before I call on the founder of the Rainbow/PUSH Coalition to begin with our six-person Panel 1, I'd like to recognize Congressman Nadler.

MR. NADLER: Thank you very much.

I want to thank the distinguished Ranking Member, and I want to commend him for his leadership on this very important issue. The right

to vote in a free election and the right to have your vote counted are indispensable rights. Without them, a democracy would be meaningless. More than that, the public must have the confidence that the system is fair, so that the results of that process wins broad acceptance.

Unfortunately, recent elections, marked by the closeness of the results, have highlighted some serious problems. In a 50 to 49 nation, questions about qualified voters not being allowed to vote, about valid votes not being counted, about equipment failing to function and being unable to verify the results threaten the stability and the fairness of our system of government.

The Constitution guarantees the right to a republican form of government, and I would remind my colleagues on the other side of the aisle that the framers had in mind republican with a small r.

[Laughter.]

MR. NADLER: Emerging revelations of voting irregularities, coupled with well-documented efforts at voter suppression have moved us to

investigate the irregularities of the 2004 election. We have an obligation to investigate the facts, get a clear understanding of what happened during the 2004 election, and do everything we can to make sure the election problems are fixed before the next election. To stick our heads in the sand would be a real disservice to the nation.

We must also act expeditiously. With just two short years until the next elections, Congress does not have much time to act, and the states will not have much time to implement any changes that might be necessary. We do not have the luxury of time. In response to widespread reports of voting irregularities, including faulty equipment, voter suppression tactics and other problems, we've asked the Government Accountability Office to undertake a systematic and comprehensive review of election administration throughout the nation.

This hearing is part of that fact-finding process. The Democrats on the House Judiciary Committee are determined to get the facts and to act on them. The events in Ohio present a good

starting point, and I look forward to the testimony today. I very much look forward to hearing from our distinguished panel, and I thank them for their participation.

MR. CONYERS: Thank you very much.

We're making abbreviated statements, and I note that you have more to add.

I recognize the gentleman from Virginia, Mr. Bobby Scott.

MR. SCOTT: Thank you, Mr. Conyers, and I appreciate you for holding this hearing on voting irregularities in Ohio during the 2004 Presidential election, and I join my colleagues in welcoming our distinguished witnesses.

Although today's hearing is about what happened in Ohio, the complaints on election day were not limited to Ohio. We also had at least 500 complaints from voters in Virginia, which included machine breakdowns and mechanical issues, problems over voter registration and voting rolls, voters not being offered provisional ballots, ID and signage problems, long lines and allegations of

discriminatory or intimidating activities.

Problems in my district included voters being given a ballot on which I was not listed on a Congressional candidate. They got started getting personal when they did that.

[Laughter.]

MR. SCOTT: We need to look at issues--just summarizing my other remarks, we need to focus on a verified paper trail without rolling back the interests of disabled voters, and we need to look at schemes designed to intimidate, confuse or otherwise deny people their right to vote.

So again, Mr. Chairman, I'd look forward to our witnesses and thank you for calling the hearing.

MR. CONYERS: Thank you so much.

The gentleman from North Carolina, member of the Judiciary Committee, Chairman-Elect of the Congressional Black Caucus, Mel Watt.

MR. WATT: Thank you, Mr. Chairman. I'll be very brief.

I want to express my thanks, as others

have, to you for convening this hearing and to remind folks that the most basic part of democracy is making sure that every vote is counted in an election. You can't be any more basic than that. And if things are going wrong in that process, we need to know what is going wrong, and we need to continuously evaluate how to make things go better and things go right, so that every single vote that is cast is counted and that there are no impediments to casting votes.

You will recall, Mr. Chairman, that at a hearing prior to the election, I showed up with a photograph that had appeared in my local Charlotte paper which showed a donkey with a saddle bag full of ballots headed for the outer rural areas of Afghanistan, and the United States Government was financing the delivery of ballots to the remotest areas of Afghanistan by donkey.

If we can guarantee the right to vote in the most rural areas of Afghanistan, we certainly ought to be able to guarantee that we can count every vote in Ohio.

[Applause.]

MR. WATT: So I think that's what we are here about, to make sure that if there were irregularities, we know what they were; if they had an impact on the outcome of this election, that we can rectify that, and probably most importantly, as we go forward into future elections, to make sure that we are constantly correcting the process. And if we accomplish any of those goals today, this hearing will be well worth the time we spent.

MR. CONYERS: Thank you, Congressman Mel Watt. From Houston, Texas, member of the Judiciary, Congresswoman Sheila Jackson Lee.

MS. JACKSON LEE: Mr. Chairman, thank you very much for convening what I think is a singular hearing of this Congress and will be a singular purpose for the 109th Congress, and that is the purity, the integrity, the transparency of the vote of every individual who has the right to vote in the United States of America.

Voting is like the air we breathe. It does not work if it is not pure. We have found in

the last election that the voting has not been pure; it has been tainted. And as I've heard some testimony and some comments, it is not a question of who has won or lost. Of course, that is what they will taint us with today, but it is a question of what American person has won or lost in their opportunity to voice their view and to participate in democracy.

So I see this as an extremely vital hearing, and I would challenge the 109th Congress not to let this be the last hearing. January 30th is maybe not a date that is well-known to many of us, but it is a date that this country claims that it will have free and fair elections in Iraq. How sad it would be to go to attempt to have free and fair elections in Iraq when we cannot declare that the election of November 2, 2004, was free and clear and transparent and real for all of those who attempted to vote.

[Applause.]

MS. JACKSON LEE: So I conclude by saying that I look forward to the testimony of those of

you who have been actively involved. I join my colleagues in saying that a paper trail cannot be left along the trail any longer. We need an independent audit of the election results as well, especially in the case of all discarded and provisional ballots, and there must be independent testing of the voting machines used in Ohio, and I believe that all elected officials who have governed the elections must give affidavits to indicate that they believe that the election has been fair and transparent, and I thank you, Mr. Chairman, for this excellent hearing. Thank you, members, for being here today.

MR. CONYERS: And I'd thank all of my colleagues for their brief remarks. There will be opportunity for them to expand upon their opening statements.

Reverend Jesse Jackson, founder, Rainbow/PUSH Coalition; civil rights activist; counselor to Dr. Martin Luther King, Junior; a distinguished civil rights leader in this country whose entire career has been based upon making the

system of justice in America work, and I ask him to be our initial witness, and I ask all of our witnesses to keep their remarks as brief as they can, because there are questions from the members and the press and the audience that we would like to be able to entertain.

We are glad that you could come to Washington this day to be with us, and we welcome you here and await your testimony, Reverend Jackson.

REV. JACKSON: Thank you, Mr. Chairman and members of the Committee. I was duty-bound to be here today. There is an unbroken line between Selma, Alabama and Ohio. I want to thank you and the members of the Committee for having the hearing today, the Green and Libertarian Parties, as remnants of our democracy, who have coalesced to cast the light in dark places when others have surrendered much too early.

Today, as we gather, the worth of America's vote and the credibility of our democracy is being weighed in the balance. Why is the

election in Ohio certified 34 days after the election? Why was there such a large exit poll gap in Florida, Pennsylvania and Ohio, targeted states? Why are the parallels between Ohio and Florida: pre-election problems, election irregularities, and post-election counting so consistent?

The 2004 election is not past tense. We need emergency attention in Ohio now.

[Applause.]

REV. JACKSON: We must not adjust to tyranny and gloat that imperfection in voting irregularities and suppression tactics are reasonable expectations. They are not. Too many world-changing events have hinged on one vote for us to be cavalier when thousands are systematically disenfranchised.

I'm here today to make a moral appeal for a thorough investigation, including forensic computer analysis of the machines in Ohio; to recount the vote in the face of many irregularities and other inconsistencies; for those in charge to recuse themselves inasmuch as the judge or the

referee in the battle must have a detached objectivity with the appearance of fairness.

We must further change the law. This system of 50-state separate and unequal elections, 3,067 counties, 13,000 election administrations must give way to the fulfillment of the American promise, which requires an amendment to the Constitution affirming the individual right to vote, Federally-protected, and an even playing field for all Americans. The Electoral College should be abolished. It should not have the power to defy the popular will.

Let me speak today and speak up for those who we asked to stand in line for hours to vote in precincts with incomplete poll lists, facing out of state shyster lawyers armed with caging lists, with nonauditable private-owned voting machines without paper trails, hemmed in by arbitrary rules issues by partisan, biased and ambitious election officials.

I'm here today to speak up for the poor, for too long denied the right to vote; the women

whose right to vote was extended into the 1920s; whites who could not pay poll taxes, Latinos who are English language challenged; for African-Americans, this has been a 346-year journey, a long road of bloody battles, 1619 to 1965, denials, unjust laws, lynchings, work without wages, and through it all, served honorably in our nation's military to create and defend democracy around the world.

That's why it has been too slow coming, survived by too much violence, for our leadership to be so cavalier with the shrug of a shoulder let it go. In Ohio, I stood in the rain with citizens who waited for two hours, four hours, six hours, just to cast a vote that might or might not be counted. Some were told they were in the wrong line; sometimes, with more than one precinct in the room, told to go back to the back of the line in line two. For the poor, the illiterate, the old and the sick, this was classic voter suppression.

I'm here today to speak for Latinos in Nevada, who were falsely registered to vote by

thugs, who then tore up the registration forms, throwing them in the trash. I'm here today to speak for Native Americans, who continue to be mistreated and ripped off by powerful public officials in so many states, who ask only to be allowed to cast their votes in the land taken from them by force.

We must not betray the dreams of those who have paid such a high price by silence, impatience or surrender. I'm here today to speak up for students and young people who turned out in force despite county officials who often tried to deter and deny them polling places on campuses. Therefore, a legal complaint should be filed asserting a violation of Section 2 of the Voting Rights Act.

The voting procedures in Ohio resulted in disparate impact on minority voters. But far too many are being far too silent and passive in the face of this challenge to democracy. The Attorney General is charged with the enforcement of the Voting Rights Act and must use the resources of its

office to enforce the equal protection provisions.

Silence is betrayal. From the tremendous legislative work led by Lyndon Johnson in 1965 and the awesome leadership of Dr. Martin Luther King, Junior, from the blood of Goodwin, Schwerner and Cheney, Viola Liuzzo, Medgar Evers, and the wreaking pain and humiliation endured by Fannie Lou Hamer, I continue to urge the Kerry campaign, the DNC, the Democratic Party, those who depend upon the vote of African-Americans, Latinos, people of color and the young, those that profess to have love for freedom and dignity of any party to join us.

I urge the Congress to act before Michael Moore comes back and exposes the violations and the capitulation again.

[Applause.]

REV. JACKSON: Why 34 days before certification of Ohio's vote, 34 days, yet we keep hearing a clean election without problems? The black vote was the object of so much tyranny up to 1965 and so many maneuvering schemes of

gerrymandering, annexation, at-large voting, roll purging and voter intimidation through the 1990s?

The black vote, which is so instrumental when our vote is counted, was again targeted in several ways. The impact of that targeting affects us all: one, Mr. Congressman, the longest lines; the most spoilage and discounted votes; 155,000 votes or about one-third came from Cuyahoga County and Cincinnati, Hamilton County; the most eliminated provisional votes, the most inconvenienced; the most victimized by precinct manipulation; machines unused in warehouses; the machines were dry while the voters were wet.

Ohio, 34 days? Suppose five states had to wait 34 days to certify their elections, and they could if people had had the will to contest them. Suppose the Ukraine election had to wait 34 days or South Africa or Iraq had to wait 34 days before election certification. Why did they have to wait so long?

Why are there 92,000 unprocessed ballots, mostly among the poor, undercounts and overcounts,

all the result of a breakdown in machinery? Why 150,000 provisional ballots in 88 counties, 88 counties using different voting machines and different standards for counting and discounting votes?

Why in 2004, we have an uneven field, different standards and faulty machines characterize the vote in too many places? Why in Warren County, members of the Congress, did election officials issue a homeland security threat and then lock out the press and independent observers while they secretly counted the votes, as if bin Laden was on his way to Warren County, Ohio?

Why are voting machines still used that are privately-owned by partisans, still subject to glitches and manipulation? Why are absentee ballots and military ballots still issued in an inconsistent, inaccurate and untimely fashion? Who is accountable? The integrity of the voting machines and the machine tabulation is an issue. We need a forensic computer analysis of the voting machines, and the machines left in the warehouses

must be impounded.

The whole idea that partisans with a vested interest in the outcome can be in charge of an election is unreasonable. Suppose two teams play for the Super Bowl. The election of the President is the Super Bowl of American politics. The owner of the home team, the incumbent team, is in charge of the judges, referees and the replay? That would be unacceptable.

Impartiality is key to the very appearance of fairness. I urge Congress to come to Ohio immediately to conduct a hearing, and you will see the classic calamity of--

[Applause.]

REV. JACKSON: --you will see the classic calamity of a state's rights election at work up south with different standards at work in every state and country. The richer counties have first class machinery; the poor counties get poorer machinery. People in rural areas are yet another victim of an uneven playing field.

Do not take lightly the exit poll gaps,

the more superior of polls. Don't take lightly the vote disparity between Kerry and Supreme Court candidate Ellen Connally. And hear this: in Cuyahoga County, a judge, where she is best known, Kerry got 120,000 more votes than she got where she is best known. And in 15 other counties, counties where she is less known, she got 190,000 more votes greater than Kerry's margin over Bush. This abnormal and inexplicable vote disparity demands an investigation.

In conclusion, this race is not over until it is certified and every vote is counted and honored; a full investigation shows that every vote was honored. And for the future credibility of the process, we must end the practice and precedent of voter suppression and disenfranchisement schemes.

As we approach the 40th year of the Voting Rights Act ending voter discrimination in the states, we must honor the legacy of Dr. Martin Luther King, Junior and Lyndon Baines Johnson, both of whom faced persecution and marginalization. It is the success of their efforts that has given

America credibility.

Our democracy bragging rights around the world come from Lyndon Baines Johnson and Martin Luther King, Junior. Can you imagine America today without a public accommodations bill and the Voting Rights Act? Yet, the forces that resisted those landmarks then never cease to find ways to manipulate and undermine them. Those who never fought the right to vote at home, never fought for the right to vote at home, who did not stand with Dr. King and sought to marginalize Lyndon Johnson now bomb for democracy in Iraq and judge democracy in Ukraine, hold high standards for democracy in South Africa. I cry out for this sense of urgency and an even playing field for democracy at home.

In closing, I make this appeal today to honor the great American dream, to make this a more perfect union, to complete the task of honoring America's highest promises. Arguably, the four highest moments in our democracy are, one, 1865, the Thirteenth Amendment to abolish slavery after 246 years, 246; number two, 1954, to end legal Jim

Crow in 1954 after nearly another century; number three, the 1964 Civil Rights Act; number four, the 1965 passage of the Voting Rights Act.

The promise of the founding fathers, the dream of Dr. King, the passion of Lyndon Johnson must be honored. The unfinished business of this drive for an open, fair and transparent democracy is our focus today. Before we go any further debating, amending the Constitution for immigrant access to the White House, though a noble cause, will only help some.

We should implement first a one person, one vote democracy, a direct election of the President to motivate a 51-state campaign, inclusive of the entire nation, not just 20 battleground states. Congressman Jesse Jackson, Junior's bill, which calls for a Constitutional amendment on the right to vote for all U.S. citizens, Presidential elections with one set of rules, where the individual right to vote is protected by the U.S. Constitution, will go a long way toward achieving this goal.

Lady Liberty was presented to America as a gift by the French. We made the bold and bloody step during slavery and to save the union. We broke with the tyrants of suppression, colonialism and slavery. It elevated America to the mountaintop of hope and allowed the whole world to look at our beacon light. It was in the context of this conquest for a more perfect union, America honoring its promise that Lady Liberty can say give me your tired, your poor, your huddled masses who yearn to breathe free.

We must not allow the flame of liberty to go out, even for the least of these in Ohio. Today, this is our challenge and our opportunity. Let us celebrate 2005, the year of Martin Luther King and Lyndon Johnson, the year democracy was born for all of us 40 years ago, the year we complete the unfinished business of democracy.

Brothers and sisters, we have unfinished business. We are not whining over a lost election. We are crying for a fair one in 2004. Keep hope alive.

MR. CONYERS: Thank you very much,
Reverend Jesse Jackson.

[Applause.]

MR. CONYERS: So much, thank you.

[Applause.]

MR. CONYERS: I've had the opportunity to talk with one, two members about us going to Ohio for Congressional hearings, as you have challenged us today, and I think that we will be able to report that we will accept your challenge and that this Committee will go to Ohio for hearings.

[Applause.]

MR. CONYERS: I thank you so much for your comments.

I'd like now to call for not as much time as Reverend Jackson to consumed; the president of People for the American Way, a very experienced lawyer and public servant, Ralph Neas. Welcome to this hearing, Ralph.

MR. NEAS: Thank you, Congressman Conyers and all the members of the panel for this opportunity to share the perspective of People for

the American Way Foundation and what happened in Ohio and what happened all over the country, as you said before, in 2004.

We two days ago released, as you know, Mr. Conyers, our report by the People for the American Way Foundation and the NAACP and the Lawyers Committee for Civil Rights Under Law Shattering the Myth: an initial snapshot of voter disenfranchisement in the 2004 elections. We, of course, had been observing the whitewash that was really occurring throughout the United States by pundits and by politicians that somehow, this was a clean, fair election in Ohio and elsewhere.

In fact, Bob Ney, at a conference yesterday just before I spoke said it was a remarkable successful election in Ohio around the country. I thought I was back in Alice in Wonderland or in some Orwellian interpretation of what had just happened.

We issued three reports in the last three months, one with the NAACP was the Long Shadow of Jim Crow. These reports that document that voter

intimidation and voter suppression unfortunately persist in this country, and Ohio, I think, was the best example in 2004.

I come before this Committee with a mixture of emotions and feelings; certainly, elation and pride at the citizens' movement that constituted the Election Protection Coalition, the hundreds of organizations--I've mentioned the NAACP and the Lawyers Committee; Melanie Campbell from the National Coalition on Black Civic Participation sits behind me. The AFL, Rainbow/PUSH Coalition, the Latino groups, the African-American groups.

I could go on and on and on about the leaders of this coalition putting 25,000 volunteers on the ground in 3,500 precincts in 17 states; half of these 25,000, Mr. Conyers, were from states around the country going to these precincts where there had been a history of disenfranchisement; the hotline, 1-866-OUR-VOTE, 200,000 phone calls, 40,000 complaints on election day only, and that's just the tip of the iceberg. We were only in 2 or 3 percent of the precincts throughout the country.

Mypollingplace.com, run by People for the American Way Foundation, 3 million Americans on November 2 went to our Website to see where they had to vote, what kind of machines were going to be used and how to operate them. Government failed in 2004, and a citizens' movement really had to replace the responsibilities and functions of the state, local and Federal governments.

Eight millions bills of rights and GOTV literature were distributed around the country in these 3,500 precincts. Julian Bond said, when recalling the 1964 Freedom Summer, which was a transformative moment in my life, that was an historic moment, a landmark moment. But the Election Protection Coalition did, all the people across the country, was ten times larger than the Freedom Summer, and the citizens of this country should be applauded for their activism and their commitment.

The impact was to help millions of Americans. Election Protection came about because 4 million to 5 million people were disenfranchised

in 2000, not just in Florida but all around the country. Election Protection helped millions of people. And it wasn't just on Election Day: it was the litigation, the advocacy and the earned media before election day, especially in Florida and Ohio that helped so many people.

But I come here also with anger and sadness at the travesty, the injustice, the hypocrisy that we have seen especially in Ohio but again, in Florida and in many other states around this country. Those 40,000 complaints were the tip of the iceberg, and we've got statisticians, social scientists, who will extrapolate those numbers and give us a sense of how many hundreds of thousands and maybe millions of Americans who were disenfranchised in 2004.

There was voter intimidation; not subtle. In Arizona, there were people going around saying too many Mexican-Americans voting today; in Fulton County, Georgia, they were saying listen: the Secretary of State said there are fewer machines in Fulton County because blacks, they just really

don't turn out to vote. We don't need the machines.

There were voting machine problems. There were absentee ballot problems, provisional ballot problems, voter suppression problems, long lines. I think Jesse articulately expressed this. I believe that the long lines will be key to finding out the extent of the voter suppression. Why were there so many people in line in urban, poor areas, communities of color, when the voter registration was so high everywhere in the country?

You go to the suburbs, the exurbs; there were no lines, because one witness said to us in Cuyahoga County, we had fewer voting machines on election day than we had on primary day; fewer machines in 2004 than in 2000.

Mr. Blackwell, the Secretary of State of Ohio does earn the Katharine Harris award of 2004.

[Applause.]

MR. NEAS: He did everything possible for months. Why do we have to have 80-pound weight paper rather than 20-pound weight paper to be able

to register to vote? The provisional ballots, the absentee ballots, the 3,500 challenges we talked about, the 35,000 people that were threatened with being challenged. That's not the spirit of democracy; that's the spirit of suppression. He did everything to minimize the vote in the urban areas and to engage in voter suppression, and I hope the hearings really emphasize this, underscore this. I think that prosecution is something that should be considered with respect to what happened in Ohio.

[Applause.]

MR. NEAS: I know that you're about to put down the gavel. I know you're about to put down the gavel, and I want to conclude by saying my last emotion, feeling I want to show and share is resolve: let's get the facts; let's get the truth out there; let's prevent a repetition of 2004. We've had three hearings in Ohio. We're going to do hearings in seven other states.

GAO, I applaud you, Mr. Conyers and all of you for the GAO report that is being done. Let's

get the reports done, the litigation, the legislation. We, whether it's in Ukraine or in the United States of America, every vote should be counted. Every vote. We should be the model of democracy, not the model of hypocrisy. We're not going to rest until every Democrat, every Republican and every independent can cast a vote that counts.

Thank you, Mr. Conyers.

MR. CONYERS: Thank you very much, Ralph Neas.

Without objection, the three articles that you have presented to us will be included in the record.

[The information follows:]

***** COMMITTEE INSERT *****

MR. CONYERS: And now, for a time less than even Ralph Neas', I'm going to recognize David Cobb, who has been granted a recount in the State of Ohio, and we welcome you to this hearing, David Cobb.

[Applause.]

MR. COBB: Thank you, Mr. Conyers.

My name is David Cobb, and I was the Green Party Presidential candidate in the 2004 election cycle. And although the Green Party was ignored by the corporate media, although we were excluded from the debate process by the corporate controlled debate process, I think it's important to underscore that the Green Party continues to grow larger; the Green Party continues to grow stronger, and the Green Party continues to grow better organized with every election cycle.

And I think that there is a reason for that: this election was no different. We grew by 5 percent; we elected 50 more people to office. Our growth can be attributed to the fact that we are a serious, credible values-based political

party. I believe that we are the remnants, the echo, if you will, of the Rainbow. We are the echo of Selma. We are the echo any time people rise up and create their own political party, when we the people believe that the corporate-controlled parties aren't representing us.

[Applause.]

MR. COBB: Our values of peace, racial and social justice, ecology and real democracy are core American values. And even as we gather today to hear testimony regarding the shameful practices of voting suppression and civil rights violation and partisan manipulation that occurred in the State of Ohio, let us remember that there are growing social movements and people's movements that are demanding democracy.

And it's not preserving democracy, Mr. Conyers. We must create democracy in this country.

[Applause.]

MR. COBB: As the Reverend Jackson reminded us, there has been a series of steps along the creation of democracy, and we are not done. We

are not done in this country. We have not yet perfected democracy. We are moving forward, but we still have miles to travel.

We are also demanding a fundamental transformation of the corporate control not only of our government but of our society itself. You see, the Green Party perspective is unique, because we are a so-called third party in a two party system, and as such, we bring a unique perspective. It's important to note that ballot access is easier in most states in the former Soviet Union than many states in this country. Most other countries enjoy proportional representation and instant runoff voting and preferential voting systems that actually empower citizens to participate in their voting systems.

The role of alternative political parties in this country has been profound. Remember that it took so-called third parties to champion for the abolition of slavery; women getting the right to vote; to create the Social Security Administration, unemployment insurance, workers compensation laws,

pure food and drug laws and the end of child labor.

Today, it is the Green Party that is standing up and demanding a full recount in Ohio. I join with Rev. Jackson in calling for a constitutional right to vote. Thank you, Congressman Jesse Jackson, for providing that leadership. We need instant runoff voting and proportional representation. We need publicly funded elections in this country. And lastly, let me implore you: allow alternative parties to participate in this process. We represent a growing movement in this country. We should not be silenced. We will not be silent.

Thank you.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: As our time runs away from us, I am pleased now to recognize Attorney Cliff Arnebeck, who has worked with the Rainbow/PUSH Coalition and other civil rights groups for just a few minutes.

Welcome to this panel, sir.

[Applause.]

MR. ARNEBECK: Mr. Conyers, thank you very much, and all members of the Committee for being here.

My only involvement in this election prior to election day was on behalf of a group called Alliance for Democracy as a lawyer for that group, challenging the expenditure of \$3 million of illegal corporate money to influence the Ohio Supreme Court races.

However, on election day, the founder of the Alliance for Democracy commented that it appeared to him that there had been a rigging of the election in Florida and Ohio. In response to that memorandum, in my capacity both as the co-chairman of the Alliance for Democracy and the chairman of the Legal Affairs Committee of Common Cause Ohio, we began to explore exactly what that rigging might involve. And I just want to make a few brief comments and respond to questions later.

Mr. Nadler and Mr. Watt both referred to the importance of the future, learning from this

experience and having an impact upon the future.
And I couldn't agree more. But what I want to say
is that this election, the fraud in this election
in Ohio must be fixed before this election is
finalized.

[Applause.]

MR. ARNEBECK: The people of the State of
Ohio, the people of this nation, and the people of
this world cannot accept a fraudulent election for
the President of the United States.

[Applause.]

MR. ARNEBECK: Mr. Watt referred to the
Afghanistan as an example, the transcending vote,
the donkeys out to get the votes in the remote
parts of Afghanistan. I think the most pertinent
analogy to our situation is the election in the
Ukraine. They had exit polls showing one candidate
won; the official result was to the contrary. Same
situation in Ohio. Their candidate, who lost
apparently by an improper election, was in the
fight, as were the entire people of that nation.

The best precedent for the future is that

to establish firmly on the part of the Federal Government and the state governments that we will not tolerate fraud, fraudulent manipulation of our elections. And we will not move on until we find out what the fraud was, and we correct it.

[Applause.]

MR. ARNEBECK: Rev. Jackson has been using the sports analogies, and I think it really pertains: we have an election which unquestionably involved many, many fouls, open, conspicuous conspiracies against the civil rights of black Americans. There's no one with an honest view of the situation can dispute this. The lines in the black precincts were two, three, four times as long as those in the suburbs.

Now, some say, well, gee, that's just an accident. When you see that kind of an event, you better believe that someone had intended that. Now, why was that intended? Because somebody doesn't like black Americans? No. It's because black Americans have this propensity, statistical propensity, to vote nine times out of 10 in support

of a Democratic candidate. So if you're on the Republican side, and as a partisan, you're trying to affect the vote, if you can suppress black voters, you're going to help your candidate in that race.

Congresswoman Jackson Lee referred to Iraq and this impending date, January 30th, in which Iraq is supposed to have a democratic election. How can we, with a straight face, go to Iraq and say we're going to sponsor and help you have a fair election and establish a democracy when we have this record of a corrupt election in our own country? We have to clean it up. We have to clean it up now.

[Applause.]

MR. ARNEBECK: What was the lesson of Florida? The lesson of Florida was that the election was certified; the election was officially made; and a president inaugurated before they counted the votes. And it was the news media that insisted that there must be an accurate vote count. So after all that official process took place, the

news media got all the votes and counted them. And guess what? Al Gore got more votes than George Bush in the 2000 election.

[Applause.]

MR. ARNEBECK: So when people say never again, never again, what happened in Florida in 2000, what I think they mean by that is we should never again certify and inaugurate a candidate until we've established that they got the most votes.

[Applause.]

MR. ARNEBECK: I'd be happy to conclude if you would like to proceed, Mr. Chairman.

MR. CONYERS: Thank you very much.

Let's thank Cliff Arnebeck, Esquire, for joining us this morning. Thank you for your testimony, Mr. Arnebeck.

[Applause.]

MR. ARNEBECK: Mr. Chairman, Reverend Jackson has asked me to make one other point, if you don't mind.

MR. CONYERS: All right; that's

permissible.

MR. ARNEBECK: There were two categories of fraud in the Ohio election. The first was the open and conspicuous fraud that I spoke about that Ralph Neas so eloquently addressed. The second was the hidden fraud, that can only be disclosed by careful investigation. And it's this fraud when you look at the statistical analysis of the vote in Ohio, you see these anomalies, these statistical anomalies that can only be explained by forms of computer manipulation that would not be conspicuous to election officials, that are a direct attack on the integrity of our election process, and we have considerable evidence that that's what took place.

And that's what explains some of the things that Rev. Jackson was talking about: candidates down the ticket performing more strongly and even getting more votes than the candidate at the top of the ticket in their own party.

Thank you.

MR. CONYERS: Thank you very much.

[Applause.]

MR. CONYERS: That's a very important consideration.

I'm happy now to recognize for brief remarks Mr. Steve Rosenfeld, and I welcome you to this hearing, sir.

MR. ROSENFELD: Thank you. Thank you, Committee members.

I'm Steven Rosenfeld. I'm a journalist who is the senior producer of the Laura Flanders show on Air America Radio, where we're heard on 40 stations on the weekends.

[Applause.]

MR. ROSENFELD: That means I report and develop and oversee what we put on the air with our hosts and associates.

I really want to talk about our audience, because for them, this question is not settled. And these are people who deeply cared about the campaign, participated in it, still care, and these are people who want to work on campaigns regardless of the candidate. It's really important to know that.

And they're not satisfied with the explanations that have been given thusfar, and they don't want to be dummies. They want to know what happened so they can be more effective in their participation. And what happened after the election was that I had spoken to some Election Protection volunteers who actually led me, who were in Ohio, and they gave the first plausible explanation I heard.

Like everyone, after the election, I was thinking what happened? What can we believe? And the first thing that I heard made sense came from a fellow who was a public defender in Connecticut, Miles Garrity, who said I was in Ohio, and they shorted the voting machines in the minority districts. It was the simplest thing. It wasn't a software conspiracy theory. It was old school thuggery. It made sense. It was so simple, it was believable.

And so, what happened was we started covering that, and I arbitrarily ran into Cliff, ran into Bob. These guys are the Woodward and

Bernstein of this particular story. They have done the work and know the details, and all I'm telling you is that our audience was so moved by them that when they said we need to raise money--see, right here is our affidavits that these guys gathered under oath. Our audience raised the money to pay for it. It didn't come from the Kerry campaign. It came from people who wanted to participate and know that they could make a difference and not give up on the process.

So what I have seen as a journalist in this, and this is like the crux of this: for every voting technology, you have different problems that could happen. And you have a combination of old school thuggery and new school manipulation. And when it comes to the computer side of it, the new side of it, nobody can give a credible explanation.

Who can answer that question of what really happened? I'm hoping the Committee, you know, through your powers to investigate can actually make that assessment or help make that determination, because what you have is you have

old school tactics like shorting the number of machines, bringing out the old voter rolls so the newly-registered voters are not on them; they get provisional ballots; they get disqualified. You know, that's one class of stuff.

Then, you have these computer machines where the magnitude of the error can be much bigger. You see, what Cliff is talking about, what Rev. Jackson is talking about is how is it that the optical scan machines, you know, in these southern Ohio counties had more votes cast for a woman running for state supreme court justice who was not known, who was outspent seven to one? You guys know what it means to be outspent seven to one in a campaign on the other side of your state. How could she get tens of thousands of more votes than the Presidential candidate?

And yet, somebody has to be able to make that analysis in a credible way, and that's why I'm thinking the one thing you guys might be able to do, and this is an invaluable service. It's a nonpartisan service. And that's all I would want

to leave you with, so thank you very much.

MR. CONYERS: Thank you, Steve Rosenfeld,
Air America Radio.

[Applause.]

MR. CONYERS: Now, after we've heard from
Professor Robert Fitrakis, we would like to invite
everyone in this first panel to come and join us as
we quickly hear from panel two and go into our
questions, so I recognize now Professor Fitrakis.

MR. FITRAKIS: I thank Congressman Conyers
for calling these hearings; I thank the
distinguished Congressman and particularly
Congresswoman Jackson Lee, who heard our cries and
came to Columbus, Ohio. We greatly appreciate
that.

Let me just state for the record I have a
Ph.D. in political science from Wayne State
University. I have a J.D. from the Ohio State
University Law School. I'm an award-winning
journalist. I was the international observer that
cowrote and edited the report on the 1994 El
Salvador election, and I was an election observer

for eight polling places on election day.

MR. CONYERS: We'll hold none of that against you, sir.

[Laughter.]

MR. CONYERS: Proceed with your testimony.

MR. FITRAKIS: I think what struck me on election day, and I want to get some specific facts into the record if I could, is that when--I think when J. Kenneth Blackwell describes the election as a marvelous success and writes about it in the Washington Times, he's really referring to his role as the co-chair of the Bush-Cheney reelection committee.

[Applause.]

MR. FITRAKIS: As we go through what happened there, there's a variety of categories that this Committee should look at: the electronic voting machines, particularly when machines cast a negative 25 million votes in Mahoney County, that bears investigation. When the machines in Lucas County, which is a heavily Democratic county, when they are locked in the principal's office, and

nobody may vote at that site; when they're going wrong all day, and the Board of Elections admits the test failed prior to that, and the software is provided, of course, by Diebold, whose CEO, Walden O'Dell, is a member of President Bush's Pioneer and Ranger team, has visited the Crawford ranch and wrote a letter promising to deliver the electoral votes of Ohio, one has to be somewhat suspect.

Other things: when you admit under oath that you need 5,000 machines in Franklin County, and you only put out 2,741 on election day, and you hold back at least 68 by your own bill of lading, causing lines of four, six, seven hours, and here's the point I'd like to make: they'll say, well, that happened also in some Republican areas, indeed, it did. But let me put these thoughts before the Committee: Democratic plurality districts, districts that voted more for Democrats than Republicans, 31 percent of them lost machines; 16 percent of Republican districts.

But what is more important, which districts lost the machines? Democratic districts

that voted more than 80 percent Democratic, the African-American wards, the poor wards on the east side of the city, which I observed, 74 percent of them ended up losing machines. The Republican districts, 60 to 80 percent Republican, zero lost machines. I will submit there is a pattern there, and it is nonrandom. It is a pattern that leads directly to the suppression of heavily Democratic areas.

And here today, let me tell you that I pledge: when I was there as an election observer, and I saw a woman, an elderly woman with chemotherapy treatment with a cane who had waited two and a half hours at Douglas Elementary and fainted, and I went in as the legal advisor and said you must accommodate this woman under Federal law, under Americans With Disabilities, under HAVA, I was told no.

And when I saw that woman stagger away on her cane after fainting, not voting, I swore an oath that this would go public. Because this election, the tactics used here, would not be

allowed in El Salvador, in what I saw there. I would have written to the United Nations that it is totally unacceptable to have 77 of your machines break down in Franklin County, to have half the machines necessary.

If the ARENA Party came in and said sure, we're counting the votes; we've got the major donor to the ARENA counting that's delivered the software, that would have been unacceptable. That is private software. It is proprietary software. We need transparency.

And let me leave you with saying that the issues before this body are infinitely more important than whether Kerry or Bush won. The very American institution of democracy, as Lincoln put forward, that government of the people, by the people and for the people shall not perish is at stake here today.

[Applause.]

MR. CONYERS: Thank you very much. Thank you very much.

[Applause.]

MR. CONYERS: We thank this panel. Let's give the entire panel a round of applause for appreciation of their incredibly important testimony and ask them to please come forward up here.

[Applause.]

MR. CONYERS: Panel one, please join the Members of the Committee.

MR. FITRAKIS: Congressman Conyers, may we submit into the record all these signed affidavits before us and actual visuals of the voting lines?

MR. CONYERS: We will be happy to accept those, sir.

[The information follows:]

***** COMMITTEE INSERT *****

MR. FITRAKIS: Thank you.

MR. CONYERS: Will panel two quickly take the place of panel one, so that we can continue with John Bonifaz, Hilary Shelton, Jon Greenbaum, Ellie Smeal--yes, and then, we will have questions afterwards. We will have very brief comments from panel two: Shawnta Walcott, Professor Freeman, Susan Truitt, Smeal, Greenbaum, Shelton, Bonifaz. Very quickly.

We welcome Congressman Jesse Jackson, Junior, to our hearing and Congressman Bob Wexler from the State of Florida is with us.

[Applause.]

MR. CONYERS: As soon as we get our seats, the first witness will be the director of the Voting Rights Project, Lawyers' Committee for Civil Rights Under Law, Attorney Jon Greenbaum. We're very happy to have you here.

MR. GREENBAUM: First of all, I'd like to thank Congressman Conyers and the members of the Committee for their foresight in convening this program and their dedication to improving the

fundamental structures of our democracy.

I have a longer statement that I'm not going to spend the time to go through. In the interests of time, I would like to submit that into the record.

MR. CONYERS: It will be accepted into the record.

[The statement of Mr. Greenbaum follows:]

***** COMMITTEE INSERT *****

MR. GREENBAUM: Okay; thank you.

As Ralph Neas talked about earlier, after the 2000 election, Election Protection was formed to deal with a lot of the problems that came about in that election. In Ohio itself, Election Protection had seven cities that it concentrated on: Cleveland, Columbus, Cincinnati, Akron, Dayton, Youngstown and Toledo.

Those cities had lawyers, and those cities had field volunteers on the ground, at the polls, and in addition, we had the 1-866-OUR-VOTE number. In Ohio, we received nearly 20,000 calls to that number over the entire election period, and in addition to that, through the Electronic Incident Reporting System, there have been over 3,300 incidents reported for Ohio alone.

So from that, we're able to establish a record that really didn't exist for past elections: seven significant problems that were identified were voter registration problems, problems with provisional balloting, problems with the absentee balloting process, voting machine problems, voter

suppression and intimidation and inequitable distribution of election day resources.

These problems, both alone and in combination, is what caused those long lines and unnecessary delays, delays that poor and minority people were disproportionately affected by, as we've heard in some of the earlier testimony.

The problem of disenfranchisement in Ohio seems to be the result of three mutually destructive factors. First, what we've seen is that election officials and election administration is terribly underresourced. Effective election reform must start by providing these civil servants with the tools that they need to do the job effectively.

Second, the system is far too decentralized. It's impossible to conceive of an election system that is efficient and responsive statewide when you have machines and other elements of election administration which vary greatly from county to county. Finally, it's disgraceful that we allow partisan officials to oversee fundamental

electoral processes.

What seemed like a misadvised idiosyncrasy of American elections turned into an embarrassing reality during the 2004 election cycle. In Ohio, for example, Secretary of State Blackwell inexplicably directed election officials to refuse provisional ballots to voters who requested an absentee ballot and never received one but who could go to the polls. Election Protection immediately filed litigation that forced Secretary Blackwell to allow these Ohioans to cast provisional ballots on election day.

Across the nation, we saw state and partisan election officials privileging their party's success or sometimes their own personal political ambition over the rights of their constituency. These cracks in our infrastructure need to be addressed not just in Ohio but in these halls as well. Because of the holistic need to address the problems Americans face in casting a ballot, it's important that those responsible for reform do not rely on any currently existing

mechanism to frame the debate.

Specifically, we ask that Congress and the states look beyond the Help America Vote Act in order to effectively address the shortcomings of the system. Although we continue to support vigorous enforcement of existing legislative voting rights protections, we know now that successfully reforming the process will take additional prospective legislative pronouncements at all levels.

To be effective, we must reconsider the way we register voters and process absentee ballots. We must explore the issues of early voting and the limitations of the precinct system. In short, in order to effectively respond to the problems that American voters have, to protect each citizen's Constitutional right to cast a meaningful ballot, we must look at the system with a new set of eyes.

Our liberty as Americans, our national pride as citizens rests on the greatness of our democracy, and it is great. The foundation of that

democracy, however, is crumbling. Our freedoms and liberty ultimately must rely on a system of fairness and accountability. In order to be successful as a nation, Americans must be convinced of the veracity of democratic results. In order for Americans to continue to participate in the system, we must be confident that our voice is heard when our ballot is cast.

We have arrived at a unique moment when the failures of our system coincide with unprecedented activism that we saw this year and awareness about our process. I ask activist citizens and policy makers not to let this moment recede without action.

Thank you.

MR. CONYERS: Thank you very much.

[Applause.]

MR. CONYERS: The director of the Voting Rights Project, the Lawyers' Committee for Civil Rights Under Law.

We now turn to our Ohio organization co-founder Susan Truitt, founder of the Citizens

Alliance for Secure Elections in Ohio, and we're pleased to recognize you at this point.

[Applause.]

MS. TRUITT: Thank you.

[Applause.]

MS. TRUITT: Thank you, Representative Conyers and the Committee for convening these hearings.

This is very important. And thank you very much for saying that you will be coming to Ohio. We need you. It's desperate. This is an alert. Our election system is broken, and the election system of the United States has been taken over by private corporations. We have privatized our public elections.

How did we let this happen? We need to stop it, and it needs to be stopped now. And this election of 2004 is not over.

[Applause.]

MS. TRUITT: It's not over until all the votes are counted. That is the basis of our democracy. That is the promise to the American

people. You go to the polls, we will count your votes. And it is time to count the votes. That is why there is a recount process in Ohio thanks to the Green and Libertarian Parties, who have come to the forefront to champion the rights of all Americans.

[Applause.]

MS. TRUITT: CASE Ohio is a group of volunteers throughout the state. We are activists. We also have members throughout the country. We have organized rallies. We have tried to raise consciousness about these issues. We have fought Blackwell on every front of his battle to take over Ohio's elections, to be a partisan as co-chair of the Bush-Cheney campaign and run the elections in Ohio.

As the Rev. Jesse Jackson said, that's not the way to run an election, and it has to be stopped that we have partisan people running elections in this country. I worked on Election Protection on election day in Columbus, Ohio. I went to four precincts on the east side of

Columbus: inner city, African-American, low-income.

Driving Park Precinct: lines four to six hours long. People waiting to vote, cold, rainy day; city employees came, threatened to tow their cars because they'd been there too long.

Why were they there too long? They didn't have enough voting machines. They were intentionally suppressed in their vote. I personally saw a man come to the polls with an IV in his arm because he had been in the hospital, an elderly African-American gentleman. His family took him out of the hospital, took him to the Driving Park Precinct on the east side of Columbus so that the man could vote, because he was refused an absentee ballot in the hospital. I saw that with my own eyes.

I talked to people who spoke of their wait, of how they had to go pick up children, of how they had to return to their jobs. I received a call when I was at the call center for Election Protection: a man had been fired because he waited in line to vote.

This is despicable. This is not America. This is not the America that we are promised. This is not the America that we dream of, and this needs to be stopped now. This election needs to be dissected. We have statistical evidence of fraud in this election in Ohio, and I am very proud to be one of the attorneys, along with Cliff Arnebeck and Bob Fittrakis, who will be filing a contest of the election this week. And we are contesting it based on statistical evidence that is clearly showing fraud in this election.

And with those remarks, I will stop.

Thank you.

MR. CONYERS: Thank you very much.

[Applause.]

MR. CONYERS: It's good to know that we have citizens in Ohio who haven't given up. They are still in the struggle and all over the country as well.

[Applause.]

MR. CONYERS: We turn now to our next witness, Reverend William Moss, from Columbus,

Ohio.

Welcome to this panel, sir.

[Applause.]

REV. MOSS: Thank you very much, Mr.

Chairman.

On November 2 of this year, based on the testimony you've already heard, I would submit to you that just having past December 7th, an historic day in our history, I would suggest to you that based on the nefarious activity on the part of public officials on November 2, that day, too, in Ohio will live in infamy.

My wife and I and four of our children went to the polls at 10:00 in the morning on the 2nd of November. We did so because we both had some experience with election days. I've been elected five times to the Columbus Board of Education, and I have run for other public offices. My wife has been a judge aside from a public school teacher; numerous times on many election days.

And so, when we got there, realizing that there were unprecedented long lines, we the six of

us made the decision to go away and come back later in the day thinking that around 3:00, the lines and the long wait period would have subsided. When we got back at 3:00, the lines were even longer than what we had left on the morning. But because we were all determined to vote, my wife and I stood in line from 3:00 until 6:30, when we finally left after having accomplished our goal.

In all my years of voting, I have never experienced or witnessed anything such as what we did on that day in our attempt to vote. Consequently, and you've already heard about the other activities that were either fraudulent or a wicked device; consequently, my wife and I have decided to bring a lawsuit, to be the lead plaintiffs in a lawsuit that--

[Applause.]

REV. MOSS: It was supposed to have been filed last Wednesday. It was delayed until Friday and then until Monday and then until yesterday, and I have been assured this morning by Dr. Bob Fittrakis, who was one of your witnesses, that it

will be filed tomorrow.

But we have decided to bring this action at law simply because we believe that in the words of Lincoln, important principles may and must be inflexible. One adamant principle of our republic must certainly be the inviolable integrity of the electoral process, upon which rests the people's faith in their form of government.

America asserts that by virtue of having built with blood and labor an advanced democracy that she has a moral obligation, indeed a providential duty, to promote the idea of self-governance abroad, even at the point of a gun. So vigorous a policy bears good fruit only if the world outside our borders believes that America's interventions proceed authentically from her own decent practice and an uncompromised fidelity to timely democratic principles.

However, the world has viewed with contempt and disgust the last two Presidential elections here, which at best are questionable and at worst grievously tainted with suspicion of

malfeasance.

The world, however, cannot stand against our military might. Yet we, the free citizens of the United States of America are bound in duty, in conscience, and in justice to take a stand against the villainy that threatens to savage our democracy and forever shadow our credibility before the world community.

In our suit, we will seek simple justice for the nation. We will also petition the court's judgment against Ohio's chief elections officer. The Secretary of State violated conflict of interest prohibitions by co-chairing the Bush-Cheney reelection committee, while concurrently working to intimidate voters, disenfranchise his fellow citizens, and suppress the vote through a deliberate failure to, one, prepare for the record-breaking November 2 turnout, which both major political parties had predicted, and two, to provide a sufficient number of voting machines to accommodate the augmented electorate.

Mr. Chairman, thank you very much. Let me

commend you and thank you for your commitment to this process. It was William Shakespeare, writing in Julius Caesar, who said: "There is a tide in the lives of men which, taken at the flood, leads to victory. Omitted, all their days are spent in shallows and in misery. On such a full sea are we now afloat, and we must take the current as it serves, or lose our venture."

Thank you very much.

[Applause.]

MR. CONYERS: Thank you for coming from Columbus, Reverend Moss.

[Applause.]

MR. CONYERS: From Boston, general counsel, National Voting Institute, John Bonifaz. Welcome.

[Applause.]

MR. BONIFAZ: Thank you.

[Applause.]

MR. BONIFAZ: Thank you, Congressman Conyers and other members of the Committee. Thank you for holding this critical hearing today and for

your leadership.

My name is John Bonifaz. I am the founder and general counsel of the National Voting Rights Institute based in Boston, a national nonprofit, nonpartisan organization dedicated to protecting the right of all citizens to vote and to participate in the electoral process on an equal and meaningful basis.

We serve as co-counsel for Green Party Presidential Candidate David Cobb--

[Applause.]

MR. BONIFAZ: --and Libertarian Party Presidential Candidate Michael Badnarik in their demand for a full recount of all votes cast in Ohio for President in the 2004 general election.

In a democracy, votes must count, and every citizen's vote must be properly counted. Our clients, David Cobb and Michael Badnarik, have demanded a full recount of all the votes cast in Ohio for President in the 2004 election. They are standing up for all of us to help ensure a proper counting of the votes and to protect the integrity

of our electoral process.

We at the National Voting Rights Institute are proud to represent them, along with voters across the State of Ohio and Common Cause Ohio in support of the recount. But certain election officials in Ohio have been standing in our way. Under Ohio state law, candidates Cobb and Badnarik are entitled to seek a recount, provided that they post the necessary bonds to help pay for it.

People throughout the State of Ohio and throughout this nation have contributed the required \$113,600 for the posting of the bonds. Candidates Cobb and Badnarik have a right to this recount. We as a people have a right to this recount. On November 17, 2004, we sent an overnight letter on behalf of our clients to Ohio Secretary of State J. Kenneth Blackwell and to the directors of each of the 88 Ohio county boards of elections.

The letters ask that they immediately initiate appropriate procedures for starting the recount and that the recount be promptly initiated

following the formal applications for the recount and the posting of the necessary bonds with each county board of elections. The letters highlighted the importance of a prompt initiation of the recount, in light of the impending timetable with the casting of the Presidential electors' votes for President.

The letters further requested a response by noon on Friday, November 19th, and that the response include whether they would commence the recount procedures in advance of the statewide certification upon receipt of the bonds at the county boards of elections.

On November 18th, candidates Cobb and Badnarik, through their counsel, filed via overnight delivery for arrival on November 19th formal applications for a full recount with each of the 88 county boards of elections in Ohio. The applications included the posting of the necessary bonds with each of the county board of elections.

On November 19th, we received a letter from Monty Lobb, assistant secretary of state of

Ohio. The letter states that Secretary Blackwell refused to have the recount initiated or any recount procedures initiated prior to his certification of the statewide vote. The letter did not answer the candidates' plainest concerns about the need to conduct a meaningful recount in a timely manner prior to the casting of the Presidential electors' votes for President.

That following Monday, November 22, we filed a Federal lawsuit in Federal District Court in Toledo against Secretary Blackwell on behalf of candidates Cobb and Badnarik and on behalf of voters across the State of Ohio and Common Cause, Ohio, seeking to expedite the recount process so that it might be completed in time for the meeting of the Presidential electors at the Electoral College on December 13th.

On November 23rd, the Federal District Court denied our motion for a preliminary injunction ordering an expedited process on the grounds that the candidates Cobb and Badnarik would not suffer irreparable harm if the recount were not

completed by the time of the Electoral College meeting.

On the same day of the Federal court's ruling, the county prosecutor for Delaware County, Ohio, on behalf of the Delaware County Board of Elections, filed a lawsuit in state court against candidates Cobb, Badnarik and our organization, the National Voting Rights Institute, serving as co-counsel for Cobb and Badnarik. The lawsuit sought a court order preventing us from seeking a recount in that county, based on an argument irrespective of Ohio state law that a recount was unnecessary and too expensive.

Without going further into the details of that litigation, suffice it to say that the Federal court has since taken over jurisdiction of that matter and has denied any injunction stopping this recount from going forward.

[Applause.]

MR. BONIFAZ: While there will be a recount in Ohio, the Federal judiciary has unfortunately refused to intervene to ensure that

it will be completed in time of the Electoral College meeting.

Mr. Chairman, members of the Committee, Secretary of State J. Kenneth Blackwell has been actively engaged in thwarting the recount law. He has done everything in his power to deny our clients from having a meaningful and timely recount. It took a full 34 days after the November 2 election for Mr. Blackwell to certify the statewide results of this election, 34 days prior to certification.

The Ohio recount law states that candidates shall file their request for a recount within five days after the Secretary certifies the statewide results. Mr. Blackwell knows that, which is why he delayed his certification until this past Monday, December 6.

Secretary Blackwell's office stated that on December 7, he would be sending out certificates to the Presidential electors for their casting of the votes at the Electoral College on December 13th. These dates are created by Federal statute.

Mr. Blackwell knows that. He intentionally allowed no time for a recount to occur before he sent out the certificates to the Presidential electors on December 7 and before the Electoral College meets on December 13th.

Mr. Blackwell, who also serves as chair of the Bush-Cheney 2004 campaign in Ohio has done everything he can to push through a slate of electors based on an untested initial count of the vote. He should be stopped.

[Applause.]

MR. BONIFAZ: While the courts will not expedite this recount process, we have a message today for Mr. Blackwell: in the name of democracy, in the name of the right to vote, in the name of the Constitution, let the recount process proceed to its completion before the Electoral College meets. Let the recount process proceed to its completion prior to the casting of Ohio's Electoral College votes.

Presidential electors serve a term of office. It is a one-day term. They show up to

meet to cast their state's electoral votes in the Electoral College. They derive their power from the people of each state. They represent the will of the voters. If a recount process is proceeding, by definition, the will of the voters remains undetermined. No Presidential elector has the right to assume his or her term of office until a final determination of the vote count is made, and no Secretary of State has the right to certify the Presidential electors until a final determination of the vote count is made.

In a democracy, votes must count. We will have a recount in the State of Ohio, and as of today, we have refiled with every county board of elections and with Secretary Blackwell our clients' demand for a recount along with necessary bond payments.

The recount process will begin. And even if, and the Electoral College meets on December 13th, the recount process will continue, and if, at the end of this process, it is determined that a different set of electors should be representing

the people of Ohio, that set of electors will meet and will cast their votes for President.

[Applause.]

MR. BONIFAZ: I know I'm running out of time, Mr. Chairman. I just want to end with this point: and if that happens, the United States Congress will receive the votes of two competing sets of Presidential electors from the State of Ohio when it convenes on January 6, 2005, to formally receive the Electoral College votes. One slate will be chosen by Mr. Blackwell; the other will be chosen by the will of the people of Ohio.

[Applause.]

MR. BONIFAZ: We will have a recount, and the fight will go on.

Finally, I'll end with this: Mahatma Gandhi once said: "First, they ignore you. Then, they laugh at you. Then, they fight you. Then, you win." They are no longer ignoring us. They are no longer laughing at us. They're fighting us now, and we're going to win. Thank you very much.

[Applause.]

MR. CONYERS: Our next witness, long-time activist Eleanor Smeal, executive director of the Feminist Majority.

[Applause.]

MS. SMEAL: I'm speaking today, Representative Conyers, on behalf of the Feminist Majority Foundation, which conducted, in 2004, college campus nonpartisan voter registration and mobilization activities in some 14 states, including Ohio. And my remarks actually go not to Ohio, but actually, we have many concerns nationwide. I'm going to concentrate on Ohio, but believe me, things we saw in Ohio, we saw in many, many states. And there is a need for serious reform of our election systems certainly nationwide.

I want to first describe some general concerns we have that we arrived at from analyzing statistical data on the Ohio Website, Ohio Secretary of State Website, about the election in 2004 as compared to 2000. And one of the reasons we decided to do this is after we had spent all of

this time on the election, we really wanted to understand better what happened, and especially in registration, because that is what we were concentrating on was increasing voter registration, especially not only among college students but young women who we are seeking to empower.

One of the things that surprised us is that in counties such as Cuyahoga County, which we had worked in for several universities, the number of registered voters in 2004 actually decreased as compared to 2000. We were really shocked by that, considering that there were numerous, numerous voting registration drives in Cuyahoga County. We think it's one of the most extensive voting registration efforts ever conducted.

And so, we couldn't figure this out. We went back, and we looked at what happened from 2000 to 2001? What happened from 2001 to 2002? And I don't know if today, we have discussed--I'm sorry I was late--the whole subject of purging, but in essence--

MR. CONYERS: Excuse me, there are 30

seconds remaining.

MS. SMEAL: Okay; I'll go real fast.

In essence, what happened is there was a purging of the voter registration to 2001 and 2002 in Cuyahoga County, so all the registration that was taking place in 2003 and 2004 would literally just bring you up to par and not quite up to par. We also--so purging should be analyzed, because there doesn't seem to be any rhyme nor reason from county to county. Frankly, in Franklin County, which is Columbus, there seemed to be no purging at all. So purging is one area.

Another area that we think should be analyzed, obviously, is the election equipment, and there is a tremendous variance between the electronic equipment, the optical scan equipment and the punch card equipment. We provided charts for all of this.

Now, finally, just to give you an observation of our student volunteers and staffs, the 1998 Higher Education Act requires that all postsecondary schools do a good faith effort to

distribute voter registration material. We can tell you that in various places in Ohio, the voting registration material distributed was out of date. And we don't even know if the students who filled out these out of date forms, if, in fact, they were ever counted.

We tried to correct that situation wherever we could, but it seems to us that what they think is complying with the law is way, way under what is needed. In fact, we found in one study done by Harvard that something like only a third of our colleges and universities complied with this law, and we would think that is consistent with what we say in both Ohio and other states.

Now, as far as the long lines, I don't know if anybody has concentrated on students, but we did. And in the student areas, there were very, very long lines. Ohio State, our people observed six to seven hours. One person observed, the longest, it was 10 hours there. Bowling Green, two or more hours; long lines, Cleveland State

University.

So there's lots of ways of suppressing the votes. You can give out the wrong information; you can give a hard time to the volunteers, and by the way, what we observed was mostly volunteer organizations doing the registration drive under very difficult situations frequently.

But even having said that, we didn't think, but we will in the future: we're going to count the machines, we're going to fight for how many machines there's going to be there. We were overjoyed when we saw the long lines, thinking oh, wow, there's a lot of turnout. Now, we realized the long lines meant that some people didn't vote because, you know, the newspapers emphasized that people stayed in the lines. But let's face it: not everybody could stay in these long lines.

By the way, in Columbus, it was a very rainy day, and they were making people stand out in the rain for four hours. So this is not democracy. This is suppressing the vote by yet another means.

[Applause.]

MR. CONYERS: Thank you.

Members of the Committee and ladies and gentlemen, we have three minutes each for Shawnta Walcott, Professor Steve Freeman, University of Pennsylvania, and from Kenyon College, Matthew Segal. I'd like to recognize them in that order, and then, we will move quickly into our question and discussion period.

Ms. Walcott?

MS. WALCOTT: Thank you, Mr. Chairman, and thank you for allowing Zogby International to have the opportunity to share our thoughts with you regarding the alleged improprieties that occurred on November 2 in Ohio and in other swing states.

I must begin that by saying while Zogby International has neither pre- nor post-election polling data to support allegations, many of which have been discussed here today, it has become increasingly clear that this election has produced unprecedented levels of suspicion regarding its outcome, and we join this panel discussion in an attempt to find a resolution to these issues.

From the onset of this election, our polling data showed evidence of a deeply divided and partisan electorate, so much so that we called this the armageddon election: two Americas, locked in a battle, aimed toward the goal of capturing the White House. In many ways, our polling showed dramatic differences between the two Americas culturally, ideologically and demographically.

While there have been close elections before, we certainly have had radical differences culturally throughout our past and history, what was most important and what was missing from this year's campaign was the vital center, a buffer between the two extremes.

It is not surprising, in this context that we saw extreme levels of bitterness and that we have witnessed historic levels of turnout amongst Americans, many of whom had previously been spectators of the process, have now become inspired by issues such as the war in Iraq, joblessness and moral values.

As with the election in 2000, there were

those who questioned whether or not the process was as free and as fair as the electorate expected; more importantly, as the United States Constitution guarantees. Today, we at Zogby International too have questions of our own. We have received thousands of letters and phone calls regarding these irregularities, many of which center on early exit polling results that were uncharacteristically inaccurate in several battleground states; questionable practices at polling stations that may have resulted in votes not being counted accurately, and in Ohio, as with other swing states, the automated Diebold machines were particularly disturbing.

MR. CONYERS: Excuse me, ma'am, there are 30 seconds remaining.

MS. WALCOTT: As I stated earlier, our intention is not to contest the election results here nor introduce any new polling data that would substantiate allegations of wrongdoing.

However, what we offer is a recommendation that may help restore the dignity and public

confidence in the democratic process. We recommend that a blue ribbon, bipartisan panel be developed to investigate the allegations discussed here today and that the findings be made available to the public as expeditiously as possible in an effort to allow the much-needed healing between the two Americas to begin.

Thank you.

MR. CONYERS: Thank you so much.

Steve Freeman, University of Pennsylvania.

MR. FREEMAN: Thank you.

In the paper that I published on the subject, really, all I did was document the obvious, which was that the exit polls, there was a wide discrepancy between the exit polls initially released and the actual counts, the official tallies.

I just used tools of statistical analysis and social science research methods to show, really, that this was not possible that this discrepancy could have been the result of chance or random error. That means there was either some

sort of systematic skew in the polling process, or there were errors in the count.

I've been somewhat hampered in the study by the fact that the exit poll data has not been released and won't be released for some time, so what I did was just use the initial releases, what's referred to as uncalibrated, in the exit poll material that's now published that you would see if you were to go to any Website. The exit polls have been corrected based on the assumption that the count is correct.

[Laughter.]

MR. FREEMAN: But I do have the initial release of the data, and that does allow you to do some sort of studies. But the most important conclusion was that there is something amiss and that it ought to be answered.

MR. CONYERS: Thank you very much.

[Applause.]

MR. CONYERS: Our final witness is a young man, appropriately, from Kenyon College, Matthew Segal.

[Applause.]

MR. SEGAL: Thank you.

All right. I'm here to represent Kenyon College, and for those of you who are unfamiliar, it is a small liberal arts school in Gambier, Ohio, that is considered a predominantly Democratic institution.

The conditions at the polling location in Gambier were ridiculous. Kenyon students and residents of Gambier were compelled to stand outside in the rain, through a hot gymnasium in crowded, narrow hallways, making voting extremely uncomfortable. As a result of this, voters were inconvenienced, having class to attend to, sports commitments, social obligations and midterms.

In Gambier, many voters became overheated and hungry. Some students even left, sacrificing their right to vote for want to eat. One girl actually fainted and was forced to leave the line. Many others suffered headaches due to claustrophobic conditions and noise.

In response, Democratic volunteers who had

finished voting earlier in the day, including myself, made every attempt to comfort voters, using our personal resources to revive them with water bottles and umbrellas. All of this led to a mixed mood of excitement, anger and anxiety, and as the day wore on, the conditions only worsened.

By nighttime, there were rumors circulating as to who was leading the election. We volunteers did our best to prevent people from finding this out, but there was no stopping it. By 11:00 specifically, some stations had declared Bush as the projected winner, and though nothing was certain, it was upsetting to witness the determination and perseverance of voters in line still standing, knowing that their vote may not even matter.

It seems almost hypocritical that a society so focused on the importance of the vote did not concern itself more heavily with the actual process of voting. In Gambier, we had two voting machines for over 1,300 voters, one of which was broken for a couple hours. To make matters, worse,

we were not allowed to borrow machines from neighboring precincts, and Knox County claimed that they only had broken parts of voting machines; they could not supply us more. Neighboring counties, on the other hand, adopted a quota that every one machine represented 100 voters. Had we done the same thing, we would have had 13 as opposed to two.

National media, including Peter Jennings people at ABC, came to Kenyon to spotlight the horrific events that occurred here. However, they failed at expressing one thing: they only interviewed the Kenyon students who said how proud they are of themselves for persevering through such extenuating circumstances. What they failed to express was that we were mad; we are mad, and we demand reform.

Voting should neither be a painstaking nor arduous task, and if it is, our fundamental understanding of democracy is shattered. Voter disenfranchisement has occurred, and we need to take action.

Thank you.

[Applause.]

MR. CONYERS: Thank you. Very well done.

[Applause.]

MR. CONYERS: Very well done.

[Applause.]

MR. CONYERS: We thank the entire panel, and we now turn to Bob Wexler, Congressman from Florida, for the opening question or comment.

MR. WEXLER: Thank you very much, Mr. Conyers, and I applaud Mr. Conyers for taking the lead in bringing all of us together.

I have the unfortunate distinction of--privilege, I guess, of representing constituents that were the victims of the butterfly ballot in 2000 and then questionable circumstances at times in this past election.

My comment and question, I would like to be specific if I could: the issues relating to absentee ballots, the issues relating to conditions at the polls are fundamental to our process. They would seem, however, to have readily available solutions if there are willing participants in our

process to implement those solutions.

The issue that troubles me the most is the advent of the electronic machines and the unavailability of a voter-verified paper trail with respect to those machines. Anecdotally in my area, in Palm Beach and Broward Counties on election day, there were significant reports of people voting on these so-called floating ballots. There was a joke on the Internet with a proposed ballot where every time you press John Kerry, different parts of George Bush's name came up.

Remarkably, every complaint was never anybody who intended to vote for George Bush but who couldn't. It was mindboggling. But my question is this: from those that have identified their reports, the number of undervotes recorded in those counties across the country that use optical scan machines or other processes which provide, in effect, for a voter-verified paper ballot, what has been the conclusion of your research compared to electronic voting machine counties in terms of the number of votes that were lost?

In 2002, in Florida, the ratio, I believe, was six to one in terms of the increased number of votes that were lost in electronic machine counties. In 2004, it appears that the ratio of lost votes in Florida--I'm not familiar with other places--the ratio was smaller, although in my view, way too large.

If anyone has any information in that regard, I would greatly appreciate if they could share it.

MR. CONYERS: Thank you.

Attorney Susan Truitt, do you have a comment on that?

MS. TRUITT: I don't have specific statistics on that.

MR. CONYERS: All right.

MS. TRUITT: Bob or Cliff, do you have--

MR. FREEMAN: Since it was just certified--part of the problem seems to be almost in the opposite direction. If you have 638 people voting in Gahanna 1B, and the president gets 3,893 extra votes and ends up--that are imaginary is that it

looks on the order, county by county, from three to eight times.

The entire analysis is not done. What's more interesting is overwhelmingly, the spoiled ballots. Let me give you an example in Cleveland, and this is with the punch cards, is one district that votes 97.5 percent for Kerry has a 21 percent turnout. It's a Hispanic district. Another district that votes 97-98 for Kerry has a 7.1 percent voter turnout.

When we investigated, what we found is that the district, Ward 13, was overwhelmingly Hispanic; not one person spoke Spanish. They were putting the punch cards in the wrong way and upside down. So there's over 95,000 ballots that never recorded a vote, and statistically, as a political scientist, it's virtually impossible that that many people went to the polls, stood for hours to ruin their ballot, and that is a massive problem, and that is overwhelmingly concentrated in the heavily Democratic wards. We don't have a final count.

MR. CONYERS: Thank you.

We've been joined by Congressman Major Owens of Brooklyn, New York, and I just wanted everyone to know that he's here.

[Applause.]

MR. CONYERS: And the Chair recognizes Congressman Jesse Jackson, Junior.

MR. JACKSON: Thank you, Mr. Chairman.

Let me first begin by thanking the distinguished panelists for being great witnesses today and to thank my colleagues for this hearing and to thank you particularly, Mr. Chairman, for calling this hearing.

I think it's time, Mr. Chairman, that the Congress of the United States do more than pay lip service to the idea of the right to vote for the American people. If we can have a vote on the floor of the Congress to amend the Constitution over who gets to marry who, if we can have a vote on the floor of the Congress over whether or not the flag of the United States should or should not be desecrated, if we can have a vote on the floor of the Congress for term limits for members of

Congress, if we can vote and over and over again about spending limits as fundamental Constitutional issues on the floor of the Congress, if we can vote as members of Congress to amend the Constitution to allow the Ten Commandments to be in classrooms across this country, then, why can't we vote to amend the Constitution to guarantee every American the fundamental right to vote, put members of Congress on record in support of the idea that every American deserves the Constitutional right to vote so that they can be held accountable to the American people?

[Applause.]

MR. JACKSON: Mr. Chairman, a house built on sand can't stand, the Bible tells us. Our voting system is based on the sand of states' rights. It is built on that sand. Four years ago today, we would have a panel of experts detailing the horrors of the voting system in the State of Florida. Four years later, we have a panel detailing the horrors of the election system in the State of Ohio.

Four years from now, there will be another group of distinguished panelists detailing the horrors of some other state in the union, because the system itself, all 50 different states, are all separate; they are all unequal; there are 3,067 counties in this country. Some have punch cards; some have optical scan systems; some have systems where you can check the candidate of your choice, all separate and unequal.

And yet, we live in a nation that can build a highway from Maine to California; can land aircraft from one end of country to the other on the same length of runways, can have the same stop signs and stop lights from coast to coast, but when it comes to casting a ballot in this country, we have tens of thousands of different systems that are unacceptable to the American people, and we need to go on record, even if the Republican Party won't, and the Democratic Party won't, we need to go on record as individual members fighting to guarantee the fundamental right to vote for every American in the Constitution.

And I'll go one step further, Mr. Chairman. I know my time is up, because it is a question.

[Laughter.]

MR. JACKSON: Why should the American people be told that through case law and through acts of Congress that their right to vote is construed in the Constitution and not explicit? If right wingers in this country can say that the right to a gun is explicit in the Constitution; if Americans can believe that freedom of speech and freedom of religion and freedom of association is explicit in the Constitution, then, how can we fight for the right to vote for the people of Afghanistan, the right to vote for people in Iraq, and we don't have the explicit Constitutional right to vote in the Constitution of the United States for the American people?

[Applause.]

MR. JACKSON: It remains a state right.

[Applause.]

MR. JACKSON: For those lawyers who are

present and on the panel, what Constitutional foundation have you been able to argue in any court that allows you the basis for overturning any of the election results in the State of Ohio other than what the state statute or the state constitution may or may not allow in the State of Ohio?

Is there a Federal remedy to the answer and to the problem of the election anomalies in the State of Ohio?

MR. CONYERS: Thank you very much. Thank you so much.

Hilary Shelton of the--

MR. BONIFAZ: Mr. Chairman, may I just answer that question from Congressman Jackson, Junior, because I do--

MR. CONYERS: All right.

MR. BONIFAZ: I think it's relevant.

You know, in this case, in this recount case before the Federal courts, we argued that there was, independent of the state law guaranteeing the candidate's right to a recount,

there was a Federal Constitutional right of the voters to the recount, and the court rejected that argument, and I think it precisely goes to your point.

If there is language directly in the Constitution that guarantees all citizens the right to vote, then, that case is far stronger. Thank you.

MS. SMEAL: I can't resist. The 19th Amendment explicitly was fought, at least women thought they won the right to vote, and it certainly was a Federal amendment to the Constitution. And it seems to me the 15th Amendment is explicit. Maybe there is a way that women and African-Americans can extend their rights to white men for the right to vote.

[Laughter.]

MS. SMEAL: But it's certainly a Federal guarantee, I would think.

MR. JACKSON: Unfortunately, the 15th, 19th, and 26th Amendments, Mr. Chairman, are written in the negative, and they are not construed

as fundamental rights to vote. They are construed as antidiscrimination rights against African-Americans, women, and even age in the 26th Amendment.

Bush v. Gore said specifically that the individual citizen has no Constitutional right to vote for electors for President of the United States, and that is at the heart of this hearing, Mr. Chairman.

MR. FITRAKIS: Stranger yet, if I may just briefly say, that Ken Blackwell's office and the people defending this, we said when there's long lines, why couldn't you bring out some portable punch card machines or some other form of voting? They told us it violated equal protection.

[Laughter.]

MR. FITRAKIS: They would rather that 15,000 to 20,000 people not vote, and they already inherently vote on punch cards with absentee, so it makes no SENSE whatsoever.

MR. CONYERS: I thank the lawyers for this extended discussion on Constitutional rights.

[Laughter.]

MR. CONYERS: And our Committee will repair to the issues that have been raised.

The Jackson Constitutional amendment has been put forth once or twice?

MR. JACKSON: Three Congresses.

MR. CONYERS: Three Congresses now, and it is gaining support as we move along.

Let me point out that Hilary Shelton, Washington director of the NAACP, has arrived, and I'd like him to just bring a 30-second greeting and submit his testimony for the record.

Hilary?

MR. SHELTON: Thank you very much, Congressman Conyers and the other members of the Congress that have joined us, our friends and colleagues on these issues.

As you know, the NAACP since 1909 has been actively engaged in addressing the issue of full voter participation for all Americans, regardless of race, gender, ethnicity, nationality or the like. As such, we have worked to make sure that

everyone has the opportunity to fully participate in our electoral process.

Unfortunately, with just 30 seconds, I must say that we have failed tremendously. Indeed, we learned a number of things as we moved even from the 2000 election to the 2004 election. And what we learned in the 2000 election was that indeed, even in our democracy, nearly 6 million Americans' votes could literally be thrown out as they go to vote.

We won the fight for voter registration with the Voting Rights Act of 1965. We won the right to make sure that we could educate our members of the NAACP and others, even though the IRS threatens our tax exempt status even now. We are educating people on the issues that are important to our communities even without endorsing candidates or political parties.

And we have known that we can very well work to get our members out to the polls to participate in the electoral process in record numbers. We increased African-American voter

participation from 2000 to 2004 by 25 percent. It is as a significant growth; people turned out in record numbers, and the lion's share of that increase goes to our young people, those college students on campuses across our country that are still looking for jobs in the United States and other people along those lines.

We have learned that even now, in 2004, we can go to the polls to vote and not have our names on the rosters. Indeed, we learned even now as African-Americans across the country still believe in the electoral process and the democracy of the United States of America that it still lets us down all too many times. And then, we look at the issue concerns in our communities. We know that they are not being addressed; the questions are not being asked, but we brought a very clear, clean answer as we increased our participation in the last election, and we know that we have to do a number of things to address many of the placebos that have been sent forth to simply keep us quiet but not address the real issues and concerns to make sure

that every vote that we have is a vote that can not only be cast but a vote that can be counted.

So indeed, we're hoping that we can work very closely with this Committee, Congressman Conyers, and other members of the U.S. Congress to address these major problems to find out, indeed, why we have so many different processes for being able to consider provisional ballots.

Indeed, we have as many different processes as we have precincts across the country and very well how those provisional ballots would be counted or in this case how they would not be counted. Indeed, we still have forms of intimidation that happen to our communities where signs are submitted and posters are sent out and even fliers are distributed that tell our people that indeed, if you want to vote, make sure that you paid your traffic tickets, your outstanding child support and everything else; otherwise, there will be law enforcement officials at the polling sites to lock you out and to lock you up.

Indeed, we were told that if you were for

one party, you would vote on one day, on November 2nd. But if you were a member of another party, a party that over 88 percent of African-Americans supported in this last election, your day to vote two days later. And indeed, people came out to vote two days later and found out that they could not cast that vote because of the kind of trickery that we're still experiencing.

Reverend Jackson, we've gone from grandfather clauses and soap tests, where you counted the number of bubbles on a bar of soap to be able to cast that vote, and today, we're finding that we have the same kinds of problems, but the trickery has become much more insidious than ever before.

So I want to leave you copies of my testimony and other issues, very specific concerns, that we've raised specific incidents we've experienced not only in Ohio but throughout the United States.

MR. CONYERS: Thank you.

MR. SHELTON: We have 2,200 membership

units. We have 500,000 card-carrying members--

MR. CONYERS: Thank you very much.

MR. SHELTON: --and they're all prepared
to support you.

[The statement of Mr. Shelton follows:]

***** COMMITTEE INSERT *****

MR. CONYERS: Thank you, Mr. Shelton.

[Applause.]

MR. CONYERS: I think you gave your testimony.

Ladies and gentlemen, members of the panel, we're going to take a couple more questions from the members of Congress, Reverend Jackson, and then, we wanted to invite those of you who wanted to stay to discuss this with us; this is a unique opportunity for us to really put something into the record of substance.

I think we have the best accumulation of data, facts, statistics, charges, failures of process that have been put together so far, and we're not excluding any of the other organizational and Website activities that keep bringing in tens of thousands of complaints. This has to be an occurrence where we take advantage of the technology and put this on the record of American history of what went wrong and what we propose to do about it.

And so, I'd like now to recognize Reverend

Jackson and then Congressman Nadler.

REV. JACKSON: Mr. Congressman, I must tell you, I'm in a great degree of pain in that I do not want us to be allowed to vent and the Congress not act. It's like a subtle form of disrespect.

This election is not over until we are guaranteed a transparent, free, fair election. And if the issues we have raised today are not investigatable, we've all wasted our time. We need the Congress to go to Ohio now. We need some action. This cannot just be an academic venting session, number one.

[Applause.]

REV. JACKSON: Number two, I do not want the people who tried to vote and got violated and who have real suspicions to be marginalized as if something is wrong with us and not something wrong with the machine and those who own the machines.

I remember in 1964, I guess it was, Dr. King got the Nobel Peace Prize, and President Johnson gave a White House reception, and he said

Mr. Johnson, I thank you very much, but all people deserve the right to vote. He said Dr. King, I knew you were going to say that. But the fact is I wish I could give you the right to vote, but I can't give it. I wish I could, but I can't. Worse, the Congress can but won't. Therefore, you can't have the right to vote.

The Congress spoke. The President spoke. But it took an independent band of people who had to go to Selma and had to bleed some more to go outside that whole system and open it up. But now, if some of you came out of those streets, we need you to go back to the streets with your newfound power and declare our protests to be legitimate. We need some legitimacy in the struggle.

When Mr. Kerry left, he took media scrutiny with him. So it's repeated that it's over. It ain't over. The machines have not been checked. Why did it take 34 days, because 88 counties and 88 distant schemes in the sense of discounting people, most of whose children are in Iraq. No member of Congress has lost a child in

Iraq. None of the top 10 percent lost a child in Iraq.

The poor and the dying are being jammed again. This ain't right. A step further: this system can't be fixed. This is irretrievably broken. You cannot fix this under present law: 3,067 counties, 13,000 administrators, with each their own scheme; we deserve a Federally-protected right to vote.

I close on this: why do our kids do so well, from these same neighborhoods? Why do we do so well in football, basketball, baseball, track, golf and tennis? Because if you're from Mississippi or New York, California or Seattle, the playing field is even.

We deserve a Federally protected right to vote. We need a Constitutional amendment to protect our right with Federal machinery. We cannot have the poor people getting poor machines, rich folks getting rich machines and then calling it equal. It violates equal protection.

So my appeal is that we need two things:

we need some right now presence in Ohio. Let people express themselves the way they have done in Ukraine. Let's express ourselves and hear people and investigate. And secondly, let's move right now for a Constitutional, individual, Federally-protected right to vote.

States rights are unfixable. We're voting for a President. Our right to vote for President and Congress should be protected by the Federal Government, and right now, we are dependent upon states to do that.

Thank you very much.

MR. CONYERS: Thank you very much.

[Applause.]

MR. CONYERS: Thank you, Rev. Jackson.

Wait a minute. Just a moment. Just a moment.

[Applause.]

MR. CONYERS: Congressman Nadler.

MR. NADLER: Thank you.

I have a number of questions. I'm going to ask them very rapidly, and I'm going to ask if people can keep the answers brief, please.

MR. CONYERS: I cannot entertain from one member four questions. Please, I beg you, my colleague.

MR. NADLER: Okay.

MR. CONYERS: Give me a break.

MR. NADLER: I'll cut it down.

Mister--well, one of the lawyers; I don't know.

[Laughter.]

MR. NADLER: The Supreme Court in Bush v. Gore said that it was an equal protection violation if you had definition standards in different counties for how you counted, for what ballots you counted. Would it not be an equal--under that doctrine an equal protection violation if in different counties, you have different technologies with different spoilage rates, that is to say, different percentages of votes that don't get counted?

Ralph?

MR. NEAS: I think a number of us referenced this issue in our testimony, and I would

think that one of the most propitious avenues of proceeding would be to get the evidence to support such an equal protection lawsuit in Ohio immediately.

MR. NADLER: Thank you.

Second, we should obviously, I think, have national standards in elections. I do not believe we need a Constitutional amendment to do that. In 1960-something, the Congress passed the 18-year-old voting right before it passed the 18-year-old Constitutional amendment, and that 18-year-old voting right was enforced on states for Federal elections and elections that affected Federal elections, meaning elections, for instance, to the Democratic or Republican county committee, because they mailed endorsements.

One of the lawyers, again, do you think we can enforce Federal election standards by law without a Constitutional amendment, or do we need a Constitutional amendment for that?

REV. JACKSON: I'm not a lawyer, but let me say, on the HAVA, which you guys did pass, which

was designed to make things better this time around Republicans sought to make it a state enforcement rather than a Federal enforcement. And the result of using that authority that they had in the states' rights concept, in the spring, voter provisions, you could vote in the county, which was convenient.

In November, you had to vote by precinct. The state had the right to manipulate the precinct place and accept different procedures and a different basis for counting. So we are unprotected by states. We need you to protect our Federal rights.

MR. NADLER: No, no, but my question--that's what I'm saying, is if Congress were to pass a law that said we are enforcing Federal standards, the states can't do that, my question is does Congress have the authority to pass that law, or do we need a Constitutional amendment?

MR. CONYERS: Can we leave this to the lawyers and not take it up at this moment?

MR. NADLER: Okay; I'll ask the last

question, then.

MR. CONYERS: I'll entreat my colleague again. I mean, we're all lawyers, but we're not going to turn this into a legal seminar.

MR. NADLER: Okay; then, I'll ask the last question. I'll cut it down to three.

Rev. Jackson, I think, referenced the disparity in Ohio, in some areas in Ohio, rather, between the fact that in an area where some local candidate for judge was very well-known, she ran behind the votes for Kerry, and in some other areas where she was not well-known, she ran way ahead of him. And this is certainly suggestive that something very funny was going on in the chip or somewhere in the innards of that electronic voting machine. And since we do not have a paper trail, it's very suggestive, but I don't know how you prove that.

So my question for Mr. Arnebeck is, because you said we should fix the fraud in Ohio as part of this election. How can we do that?

MR. ARNEBECK: Well, in the suit that

we're about to file, we will go right to that, and we will be engaging expert testimony, among others, of Professor Freeman, two other professors who have done statistical analysis that will point the finger more clearly exactly where this happened.

In addition, in this proceeding before the Ohio Supreme Court, we will be able to exercise discovery powers, and we intend to employ the best experts in this country who are able to detect these kinds of computer manipulations, and we intend to fully investigate and find this and get it corrected in the Ohio Supreme Court.

MR. CONYERS: If the Chair--

MS. TRUITT: If I may interject part of this, too?

There are seven counties in Ohio that are DRE; 70 percent are punch card, and the rest are optical scan. However, every county in Ohio has tabulators, and they're electronic tabulators. And they're Triad tabulators. And that's where a lot of this is going on is in the tabulators. It doesn't matter which technology is being used.

MR. NADLER: So where the optical scan is used with the tabulator, if funny things are going on with the tabulators, you can check it against the ballots, though, and see if something wrong happened in the tabulator.

MS. TRUITT: Absolutely.

MR. ARNEBECK: Yes, right. And not only that. Just yesterday, when we were doing the analysis, this is Diane Miley, Miami County Board of Elections; even though the election is certified, here's on her cover sheet: please note that the 11/7 turnout--for the 2000 election, there had been a programming error which does not allow a complete report. In this election, Concord Southwest in Miami County reported 98.55 percent voter turnout with no absentee ballots, and they claim it's a computer glitch.

One hundred percent of the counties had reported, and 19,000 additional votes came in at precisely the same ratio. That machine needs to be impounded and gone over by computer forensic experts.

MR. CONYERS: Thank you so much.

Congressman Major Owens?

MR. OWENS: Just quickly, Mr. Chairman, I want to congratulate everybody for the step-by-step, painstaking work that's being done in Ohio.

But my question is what are we going to do to guarantee that, despite the fact that we are a bit tardy in setting this priority of voting rights being a concern of all Americans and a bit delinquent in focusing on it in a comprehensive manner, what are you going to do to seize the initiative and understand that right now, the cutting edge for democracy is in Ukraine? It's in Afghanistan. It's in Iraq.

The Iraqis would laugh us out of the room if we proposed to have an Electoral College set up, you know.

[Laughter.]

MR. OWENS: Across the world, the father of democracy looks ridiculous, and now is the time for us to press the issue on an international basis. Let's not leave here without some

understanding that a great commitment has to be made by all who are interested to keep the pressure on, to focus it now as never before. We are not a democracy with one man, one vote.

We have all kinds of ways where we have deliberately neglected the voting process, to the benefit of those who are in power. It started in the south and reached criminal proportions, but it certainly was adopted by the Nixon-Reagan Southern Strategy with their institutionalization of voter suppression; all these things have evolved, and we have watched it happen and not understood the significance of making it a priority to wipe it out.

So let's seize the moment. Let's put it on the international stage. Let's put it on the calendar of the United Nations. And let's go forward to make certain that the comprehensive approach of my colleague Jesse Jackson here is the only approach that really is going to get us the kind of results that we need.

We must have, in addition to a

Constitutional amendment, if you can get an administrative Congressional act beforehand, let's do that, too, but we must go on to the Constitutional amendment that guarantees once and for all that there is a right to vote to be backed up by the Federal Government.

AUDIENCE: And prosecution.

AUDIENCE: Put them in jail.

MR. CONYERS: Just a moment. Let's have order here.

Are there other members who wish to interject a comment or brief comment?

MR. JACKSON: Mr. Chairman, I have one question of you, if you don't mind, sir, Mr. Chairman?

MR. CONYERS: Yes.

MR. JACKSON: My question of you is I know we're planning a field hearing under your leadership, but if the votes are not tallied in the State of Ohio by the appropriate time, I mean, is there any thought that the Committee might consider an objection to the seating of the Ohio electors

until such time?

[Applause.]

MR. CONYERS: We are now.

[Applause.]

MR. CONYERS: Congresswoman Sheila Jackson Lee.

MS. JACKSON LEE: Some would say time for the benediction.

[Laughter.]

MS. JACKSON LEE: Mr. Chairman, let me just very briefly but very enthusiastically thank you for the leadership that has been shown here; all of the witnesses.

Let me cite in particular the very brave orange ribbon-wearing Ukraine-associating members of the Ohio delegation that are here. Let us make a commitment to you that freedom is on the way. Yesterday, we voted on the 9/11 legislation to protect the homeland. Today, we sit in this hearing asking for Republicans, independents, Democrats and no-crats to join us in understanding that there must be a nationalizing of the elections

that elect the President and other Federal officers.

I hold in my hand a portion of the Help America Vote Act, and I would simply say this in conclusion, Mr. Chairman, that those who voted and cosponsored and authored this legislation had numbers of good intentions. In fact, as I read it, I look that it has provisions for antiquated machine buyout. It has provisions for an Election Assistance Commission that has no rulemaking authority. It has requirements for providing access grants and research grants to our states.

The bad part about it, as the young Mr. Segal said, we have no protection of the system of voting, and therefore, the system of voting broke down November 2, 2004. We cannot have freedom. "Freedom is dead," as Langston Hughes has said, "if we do not have the protection of the system of voting."

I would simply ask that we nationalize Federal voting; that we have a national election day holiday for voting. No one should be fired

because they have tried to vote.

[Applause.]

MS. JACKSON LEE: That we have an independent audit of election results, of the discarded provisional ballots and independent testing of the voting machines. And my last point is that those who conduct elections should not be associated with any political party and chair anyone, anyone's national election if they are to conduct the elections.

[Applause.]

MS. JACKSON LEE: With that, I have no questions. I have heard, and I would hope that this Congress would not fail in its duty to hold national hearings around the nation and in Ohio.

MR. CONYERS: I thank you very much for the very important contribution.

We're going to take a few questions from the audience. I see they're lined up now, and please remember that your comments are on national television, and we want to keep them as responsible and constructive as this hearing has been. And I'd

recognize the first gentleman standing at the microphone.

MR. LYTEL: Thank you, Congressman, and thank you for having us here today.

My name is David Lytel. I run a Federal PAC called the Committee to Re-Defeat the President. It held the protests at the White House twice in November, and we are having another protest Saturday, and we invite all of the members to come and speak to the people directly at Lafayette Park in front of the White House at noon on Saturday.

I have a copy here of the owner's manual, the Constitution of the United States, and my question to you, Congressman, is why does it not--why do we not use the remedy that is written into the Constitution to be used in cases of vote suppression? Let me simply read it to you: "When the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state or the

members of the legislature thereof is denied to any of the male inhabitants of such state, being 21 years of age, and citizens of the United States or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state."

Now, we all know that this amendment has been modified by the passage of later amendments that include all American citizens of either gender 18 years of age or older, but I would suggest to you that if the reading of this amendment is there need to be 550,000 cases in a state where the right to vote has been in any way abridged, that in the next Congress, there should be at least one fewer member of Congress from the state of Florida, Ohio, North Carolina, at the very least.

Thank you. Why would we not use this method? Because as much as we would be in support of a Constitutional amendment to ensure the right

to vote, that's not going to be in place until the Presidential election of 2012 or 2016 or 2020. This is what we have to work with today. Why don't we use this?

MR. CONYERS: Well, what we are trying to do is not create some instant solutions for you, sir. That's a--first of all, as you recall, we were talking about--that was written when only white males could vote, and that is the way that it was termed, correct?

MR. LYTEL: Actually, it was modified by the subsequent passage of the 18th [sic] and 25th [sic] Amendments.

MR. CONYERS: Yes, but what I'm saying is that we cannot turn this into a legal, judiciary solution because you asked the question. I would like to prepare it for you; I'd like to research it; I do not have an exact comment as to why we haven't used it in the past.

MR. LYTEL: I look forward to a further discussion as to whether or not it applies.

MR. CONYERS: Yes, I would look forward,

too, cooperatively of you submitting something in writing so that we can all work on it. You know, we don't create constitutions by questions and answers after a hearing; I mean, it's a little more complex, and I'm sure you appreciate that.

MR. LYTEL: Thank you.

MR. CONYERS: You're more than welcome. Wait a minute. I did promise to yield to Congressman Watt.

MR. WATT: I thank the gentleman for yielding, and I think now is probably an appropriate time to do it, even though the speakers are lined up to engage in a little internal politics here, so that may not have much significance to the audience but has some fairly substantial internal significance. And for that purpose, I would like to engage my chairman in a colloquy to get some things in the record.

One of my concerns springs from a comment that the Chairman just made about how our institution works, and it may not have gone unnoticed by members of the public that it is not

the Chairman of the Judiciary Committee who is presiding over this hearing today but Ranking Member of the Committee. And so, my question to the Chair would be: did we ask the Republican members of the Committee or the Chair of the Committee, of the Judiciary Committee to participate or convene this hearing?

MR. CONYERS: Yes, we did, and we not only did that, Congressman Watt, but we invited every single Republican member of the House of Representatives to attend this hearing as well.

MR. WATT: And what was the Chairman's response, if the Chairman would advise?

MR. CONYERS: Well, if you look around the room, I think it's self-evident.

[Laughter.]

MR. WATT: I'm just trying to create the record of what may be visually obvious but may not be as obvious when the record is transcribed.

This is a process matter that we are engaged in here. What was the response that Mr. Conyers received?

MR. CONYERS: Well, it was entirely in the negative, sir.

[Laughter.]

MR. WATT: All right; and the purpose of this, just for public consumption, is it is hard to legislate unless you make an official record, and this is not a Democratic venture in which we are engaged; a Democratic with a large D, it is a democracy agenda in which we are engaged, the ability of Republicans, Democrats and independents to cast their votes--independents, Greens, whoever else cares to affiliate in whatever ways they wish to.

And that's what the democratic process is about. It would help us if we found an increasing amount of pressure applied on the formal process to create a formal hearing of the Judiciary in Ohio. I don't want to call this a rump session. It is not. It is an extremely important session in which we have engaged today. But the machinery of Congress operates on the official record, and I don't want that to go unnoticed by anybody, and if

we had assistance in mobilizing the official effort of Congress, we might be headed down a quicker path to relief for some of the problems that we're trying to address.

I yield back and thank the gentleman.

MR. CONYERS: You're more than welcome.

Yes, Congressman Scott?

MR. SCOTT: Thank you, and I had comments to make, and I guess they're as appropriate here as anywhere else. I think the gentleman from North Carolina has kind of revealed one of the challenges we have, and that is that there are no checks and balances in Washington, D.C. Republicans control the House, the Senate and the White House.

So when it comes to calling official hearings, you can't do it without Republicans in the House or Republicans in the Senate. You can't have criminal investigations unless the Executive Branch authorizes the criminal investigations. Some of the investigations that are necessary, we may not be able to get them done.

Our power is just to expose enough

anomalies that people get embarrassed into taking action, and that is the importance of this hearing today. So in that light, I know the exit polls have been referred to several times. In Florida four years ago, the exit polls had Gore winning, but Bush "won," and it was explained, when it was revealed, that about 50,000 Democratic votes had been spoiled.

So when people came out of the booth and to the exit pollster, they told the pollster what they thought they had done. They didn't know that their vote wasn't going to be counted. And that explained the anomaly between the exit polls and the recorded result. We've had Zogby and others talk about some of these studies. We need to see these studies in detail so we'll know exactly what we have to work with from a scientific, statistical basis so that we will have that to discuss.

Second, another point that we need to look into; this won't be a question, just an area of focus: we've heard reference to a lot of these schemes, official, not enough voting machines and

things that had partisan spin to them; unofficial, the things that the NAACP mentioned about bogus information designed, intentionally designed to discourage people to show up at the right time. Whether or not there are now prohibitions, criminal prohibitions against that kind of activity and if not exactly what we need to do.

And finally, voting isn't so complex a situation that we can't have Federally-certified voting machines that actually work and have the same voting machine everywhere. In my Congressional district, in the media market in my Congressional district, you must have 10 or 15 different kinds of machines, and it is therefore impossible to have any media showing people how to vote.

When you get onto an airplane, they show you how to buckle a seatbelt.

[Laughter.]

MR. SCOTT: Because there may be someone on the plane who's doing it for the first time. You can't have any media like that showing first

time voters how to work these machines, because any media campaign would be irrelevant for 90 percent of the people listening to it.

So, having said that, Mr. Chairman, I appreciate the opportunity and look forward to the future hearings that we will have to put pressure on people to do the right thing.

MR. CONYERS: Thank you so much.

Now, we've had a dozen people standing for quite awhile, and what I think would be the most dispositive way is to have each of you to identify yourself; briefly indicate your question or comment; and then, we will attempt to respond to as many of your points as is possible.

MS. KEESHAN: My name is Patty Keeshan, and I'm here from New Jersey and representing a number of groups: Union County for Democracy, Hunterdon County for Democracy and Bergen County for Democracy.

MR. CONYERS: And what is your question?

MS. KEESHAN: This is a question that we are going to be posing to every member of both the

House and Senate, and I'm going to start with the members here, and that is will you sign this declaration of intent:

As a Member of Congress it is my sworn duty to uphold and defend the United States Constitution. Being mindful of that oath, I believe that the single moral tenet on which that document, and therefore the nation, rests is the principle that government power can only be derived from the consent of the governed.

Consequently, the right of the people to have confidence that they are being afforded free and fair elections for their government officials is a right that no other consideration can supersede. A free and fair election is one in which all citizens--

MR. CONYERS: I don't want to interrupt you--no, I've got to know how long it is before--

MS. KEESHAN: One, two, three more paragraphs.

MR. CONYERS: Here's the point, ma'am. We get the drift.

MS. KEESHAN: Actually, you don't. Let me finish. Please allow me to finish.

MR. CONYERS: I'm afraid, with the line getting longer--

MS. KEESHAN: I represent a number of people in this room as well who are--

MR. CONYERS: And just a moment, ma'am. I'm not going to ask any member to, after you read it, to sign up or not sign up now.

MS. KEESHAN: I would like it on record.

MR. WATT: Mr. Chairman, I would ask unanimous consent that it be put in the record so that we can--

MR. CONYERS: Yes, and we would distribute it.

[The statement of Ms. Keeshan follows:]

***** COMMITTEE INSERT *****

MS. KEESHAN: I would like to read it into the record.

MR. CONYERS: No, ma'am. I will now take--and I want to thank you very much. I don't mean to be offensive, but we are on some time constraints. I will thank you so very much.

MS. KEESHAN: And this conversation has taken all the time it would have taken me to complete reading it.

MR. CONYERS: Please.

MR. WATT: I ask unanimous consent that the lady's statement be placed into the record so that we can--

MS. KEESHAN: May I read it into the record? It is three more paragraphs.

MR. WATT: We can all read, ma'am.

[Applause.]

MS. KEESHAN: Actually, you do not know what this says until you hear what it says.

MR. WATT: We can read, ma'am.

MS. KEESHAN: But I think that it's important that all of us in the room hear it as

well, just as we heard the testimony.

AUDIENCE: It's seven more paragraphs.
You're not being truthful.

MR. WATT: We are not adversaries here,
ma'am. We have the same objectives.

MS. KEESHAN: I'm feeling like it's an
adversary, because you're not allowing me to read
this.

MR. WATT: Only because you are abusing
the people behind you at this point--

[Applause.]

MR. WATT: --are you feeling that we are
being adversarial. If you would put that into the
record--

MS. KEESHAN: Oh, I'm happy to put it into
the record.

MR. WATT: --we can individually respond
to it. And I just ask unanimous consent--the
Chairman granted us unanimous consent to put it
into the record.

MS. KEESHAN: That's fine.

[Applause.]

MS. KEESHAN: Actually, no, I'm--

MR. CONYERS: Could I--and thank you very much.

MR. WATT: Can we get a copy of it so we can put it in the record, please?

MR. CONYERS: Could I yield to our attorney, Perry Aplebaum? Did you want to make this--

MR. APLEBAUM: Just briefly, what we're going to endeavor to do, we will pose that question, and we will submit as many questions as we don't get to today, we will submit to the people who have testified today, and we will put all the answers on the Internet. In addition, the entire hearing transcript record, complete with all the responses, both today and entered over the next several days, will be entered on our Website, the House Judiciary Democratic Website. In addition, I think Ms. Tubbs-Jones' statement for the record will be included as well in that material.

[The statement of Ms. Tubbs-Jones follows:]

***** COMMITTEE INSERT *****

MR. CONYERS: Yes.

Permission is granted for that.

Yes, sir.

MR. SANTANGELO: Yes, good afternoon.

MR. CONYERS: Good afternoon.

MR. SANTANGELO: Yes, my name is Charles Santangelo. I'm a professor of international business here in Washington. And I want to thank the Congressmen here, especially Congressman Conyers, for convening this meeting. I know all of us who woke up the next day after the election to read articles about election voting machines being moved out of Democratic precincts into Republican precincts were, quite frankly, sickened to read that, and it made us all--you know, I'm glad we now have an opportunity to at least--to say something.

I want to make a personal appeal to the--

MR. CONYERS: Pardon me, sir, do you have a question?

MR. SANTANGELO: Yes, it's a question--

MR. CONYERS: Okay; tell us what it is.

MR. SANTANGELO: Yes, the question is to

two of the Supreme Court justices, that I would like them to consider the equal protection arguments, both to Sandra Day O'Connor who, after the 2000 election, said that she almost changed her mind about allowing all the votes to be counted; I think that I'd like her to look in the mirror and grasp this and ask the same question.

I'd also like to ask Clarence Thomas, who, as an African-American, has suffered discrimination, I'd like him to do the same. That's all I wanted to say. Thank you for your time.

MR. CONYERS: You're welcome.

MR. SIMON: Thank you, Congressman Conyers. My name is Jonathan Simon. I'm a former political survey research analyst, and I was primarily the one who was responsible for downloading the exit polling data while it was still pure and left up on CNN.

[Applause.]

MR. SIMON: And this was the data that my colleague Steve Freeman initially used to work with

and expose some of the anomalies. My question is to the panel and to enlarge a bit upon what Congressman Watt mentioned before when he read into the record the absence of the majority members of this Committee, and that is do you realize what is at stake?

And what I mean by that is if you look at the Catch 22 of a democracy, when you've messed with its bedrock protocol, which is the vote and the ability to count the vote, we can get very upset about that in this room and outside of this room. And by being upset about that, what we would do then is put pressure on Congress--the legislature--and certainly on your colleagues who are not in this room.

And if they refuse to respond to that pressure, what we would then do in a democracy is go down to the voting places, our precincts, in 2006 and say we're going to make them pay. We're going to vote them out of office. And we can't do that if they don't count our votes, and they won't count our votes as long as they own the machines.

[Applause.]

MR. SIMON: So what's at stake is the death of a democracy. What we're dealing with here, although the formality is all in place, is a stuffed animal, not a real animal, taxidermic model of democracy, and I just want to ask if that's been absorbed that this is not about Bush and Kerry or even the Senators who may have been rigged out of their seats. This is about the future of democracy, and it is a critical emergency.

Thank you.

[Applause.]

MR. CONYERS: Thank you. Thank you for that statement. Thank you very much.

MR. RUBIN: Good afternoon, Congressman Conyers and members of the Committee; Reverend Jackson, thank you very much for being here. This is an extraordinary moment for a lot of us, and we really appreciate the energies you've put into it.

My name is Aaron Rubin from New York, formerly of Detroit, also an alumnus of Wayne State University, Bob, so I guess Detroiters are crawling

all around here. For the last 18 months, I spent almost full-time volunteering and working with organizations like ACT and True Majority, energizing voters, getting out the vote, getting people registered in a nonpartisan fashion; you know, anybody that votes is a good vote as far as I'm concerned.

And it's really a shame to see that with millions of voters energized that what ends up happening is that their reward is that they're denied the right to vote; they're disenfranchised; they're disillusioned, and I think that's the real crime here, and it's really a crime against all of us.

My question is this: recognizing the difficulty it is to amend the United States Constitution to provide any remedy in that fashion, recognizing the difficulty in the Federal Government with the current balance of power in enacting any legislation that would have a significant impact; HAVA is a perfect example of that and recognizing the difficulty of doing that

as well on the state legislative level, my question is whether or not the panelists feel that it would be appropriate to enact reform at the state constitutional level, and I point to both Florida and Ohio. Florida, in particular, they love to amend their state constitution by initiative. I notice that they're eight for eight in this last election.

MR. CONYERS: Yes, sir, can I interrupt this rather lengthy question and suggest an initial answer to you?

We want to work on the Federal side of this ledger, and I don't think that it would immediately be feasible for us to be suggesting which states should or would most profitably amend their own constitutions. So we'd rather keep it at that level. Is that a sufficient answer for you?

MR. RUBIN: Yes, I think it is. I just wanted to point out that frequently, you know, reform that occurs on a state level then gets repeated at the national level. It might be something for the panel to consider.

Thank you.

MR. CONYERS: Thank you.

We're not going to be able to take any more questions so that we've got someone on the end there, so we'll take all of the people that are standing, the ladies and gentlemen. And then, we're going to end the hearing, but you are still welcome here to talk with the panelists and the members of Congress, and by the way, Congressman Barney Frank of Massachusetts, a member of this Committee, has joined us.

[Applause.]

MR. CONYERS: So that when we end the questioning, those of you who would like to present comments or questions to anyone that is here would be perfectly welcome.

MS. LANDES: My name is Lynn Landes. I'm a freelance journalist. I've been writing about this subject for the last two years.

Completely missing out of this debate is discussion of no machines at all.

[Applause.]

MS. LANDES: The United States is in the extreme minority for using voting machines. And yet, for the past two years, going to the conferences like the Claim Democracy conference of last year, the conference of yesterday, discussion of no machines at all has been frozen out of the debate. The problem about adding ballot printers to the touch screen machines is that the machine is still there. It will still break down. It will still malfunction, and people will not get direct access to the ballot.

In addition, the audit provision that's being suggested, we have a right to direct access to the ballot and to have our ballots counted: not audited, not scanned, but counted, and that is not what is taking place. So if we stay with an audit, what we're effectively doing is denying the poll watcher the opportunity to observe the vote. We're keeping the entire process in the hands of these elections officials. And so, public oversight is eliminated.

MR. CONYERS: You make an excellent point.

MS. LANDES: Thank you.

MR. CONYERS: And I yield to Mr. Nadler.

MR. NADLER: Thank you. It's a very tempting point. I just, as a very experienced practical politician from New York, feel constrained to observe that in my experience in New York, paper ballots are extremely susceptible to fraud. And at least with the old clunky voting machines that we have in New York, deliberate fraud is way down compared to paper. When the machines break down, and they vote on paper, we've had real problems.

So there's got to be a way; there's got to be a way. I'm simply observing that as a problem. There's got to be a way of getting the best of our methodologies.

MS. LANDES: But, in fact, the MIT studies have shown that hand-counted paper ballots are among the most reliable.

MR. NADLER: They may be reliable but--

MS. LANDES: And at least if there's a miscount--

MR. NADLER: --I'm not going to argue--

MS. LANDES: --you can discover it. You can't discover miscounts with these machines.

MR. NADLER: Then maybe optical scan with paper.

I want a paper trail. I want paper somewhere. But pure paper with no machines, I can show you experience which would make your head spin.

MR. CONYERS: And we thank you for the question you raised.

[Applause.]

MR. CONYERS: It's a very important issue of whether there should be machines or paper, which has not been discussed before now. Thank you.

MR. GORDON: Thank you. My name is Asa Gordon, executive director of the Douglass Institute of Government, secretary-general of the Sons and Daughters of the United States Colored Troops with the African-American Civil War Memorial and a proud member of Congressman Scott's committee to establish a medal of honor to commission for

those who won the medal of honor at Newmarket.

Just two brief comments: one is that I filed a civil action, the first civil action since Reconstruction, to enforce what the first gentleman's question put before you that you could not answer. That civil action was highlighted in a Congressional report over all of the civil actions filed by all of the lawyers in this room.

MR. CONYERS: Fine.

MR. GORDON: One minute.

MR. CONYERS: I will wait a minute. But could you make sure that we get the benefit of this historic lawsuit to the members so that we can take it into consideration.

MR. GORDON: Yes, it has been submitted to your counsel there, Michelle Johnson, and she said she would put it in the Congressional Record, too. You don't have to respond to it now.

Two, there are 15 red states in which there is no statute in state law--pay close attention--that requires that the candidate that wins the popular vote is accorded all of the

Presidential electors. They are just doing it by tradition. If the Democratic electors cast their vote in the percentage that they received in their state, there is no state statute that declares that you cannot do so.

You can win the election legally by simple asking the Democratic presidential electors--

MR. CONYERS: This is the most amazing proposition that has ever been brought forward by a non-lawyer, and if it is accurate, it could change the whole outcome of the voting process in the United States, and we'll take that under consideration.

MR. GORDON: I would like to put into the record a graph of those states in which these statutes do not occur and in which Democratic Presidential electors can cast their votes and change the electorate without changing a thing.

MR. CONYERS: We eagerly embrace your suggestion, sir, okay?

[Applause.]

MR. GORDON: Could I submit this for the

record?

MR. CONYERS: Could I get to the next--thank you.

MR. GORDON: And one other thing.

MR. CONYERS: No, no, not one other thing.

The next person, please.

MS. DAVIS: My name is Julia Davis, and I'm actually in town because my son lives here, and I'm taking care of some other things, but I also heard about these hearings, so I thought I would come in and put my two cents in. I'm a little new at this and maybe not as expertised as many of your presenters have been.

But I think some things are just really simple. You ask for my money through taxes. You ask for my children to go to war. Why should we do these things if we're not even given the right of representation through voting?

[Applause.]

MS. DAVIS: You want from us, you want to not have to return anything, and it just doesn't work that way. I'm sorry, but it doesn't. You

want my son to die for you; you want my daughters to wave the flag. You have to give us the reason why.

My vote and everyone else in this room and across this country must be counted, must be awarded that if we're going to shed our blood and we're going to work every day in our labor's task.

Now, what are you going to do for us to keep doing that for you? What do we get in return?

[Applause.]

MR. CONYERS: Thank you, and I'm glad you came our way.

MR. MARTIN: Yes; my name is Neal Martin. I represent the Lyndon LaRouche International Youth Movement.

What needs to be addressed is why there was voter suppression. The Bush administration is run by puppet masters like George Schultz and Dick Cheney ultimately want to destroy the United States Constitution. Back in 2000, when the honorable members of the Congressional Black Caucus--

MR. CONYERS: Pardon me, sir, do you have

a question, or is this a comment?

MR. MARTIN: Yes, I'm going to ask a question.

MR. CONYERS: Please get to your question right now.

MR. MARTIN: So what actually needs to be addressed is that the George Bush--the election should not be certified by the Congress.

[Applause.]

MR. MARTIN: Now, in order for this to happen, the Congressional Black Caucus and the American population is going to need help from the Senate. Now, other than that, the thing with this election is that the Republican Party, represented by George Schultz, want to completely destroy every policy of Franklin Delano Roosevelt.

MR. CONYERS: Okay.

MR. MARTIN: This is what you should present to the United States population instead of whining.

MR. CONYERS: We have the thrust of your question, and I thank you so much.

[Applause.]

MR. POPPAGE: Good afternoon. My name is Joe Poppage, and I don't represent any group. I just represent other average American citizens.

I want to just say one thing, that I am not a conspiracy theorist. I actually am a 15-year Navy veteran, and I served in the first Gulf War for our current administration's father.

On or about November 9, I filed a report of--I alleged voter fraud in the county of Perry County in Ohio. I filed that alleged report of voter fraud with the FBI. After that, I was actually in contact with the FBI agents. I provided them with data supporting my claim of voter fraud.

MR. CONYERS: Mr. Poppage?

MR. POPPAGE: Yes, sir.

MR. CONYERS: I want you to know that we received your letter and that we included it in our 34 questions to Secretary of State Blackwell, to which he has replied to none of them.

MR. POPPAGE: My question is did I do the

wrong thing by contacting the FBI and providing them with evidence?

[Laughter.]

MR. POPPAGE: I am not one of these conspiracy theorists. I am a patriotic--and I love my country. And I want to know: I called the FBI on Friday and asked them for a status, and they told me that they turned the case over to the state's attorney general office.

They are a Federal law enforcement agency. I explained to them when I filed the report where I was alleging voter fraud, I explained to them that I understood that I was supposed to do that with the Secretary of State.

MR. CONYERS: Can I assure you that we will contact the FBI on your behalf as a veteran, a loyal American--

MR. POPPAGE: Thank you very much, sir, I appreciate that.

[Applause.]

MR. ROSS: Good afternoon. My name is Jason Ross. I also represent the LaRouche youth

movement.

And a point I wanted to--

MR. CONYERS: Do you have a question?

MR. ROSS: Yes, I have a question.

MR. CONYERS: And what is it?

MR. ROSS: The question is about the difference between vote fraud, which is pursued along state lines, and the question of vote suppression and the Federal Voting Rights Act.

My question is that there has been a lot raised about the nature of the necessity for a Federal protection for an election. I'm raising the question of prosecution under the Voting Rights Act, not just in Ohio, but even in states that Kerry won, to create a national record of voter intimidation, harassment and suppression as a case for not certifying the electors for President Bush on January 6th and for sending people to prison from the highest levels inside the campaign.

[Applause.]

MR. CONYERS: Okay; thank you for your question.

MS. VOLMER: I'm Deborah Volmer, and I live in Chevy Chase, Maryland, and I just--two very brief comments: one, on electronic voting; we have the Diebold machines in Maryland. There's no paper trail. It's not a receipt. What we need is a voter-verifiable paper trail where people can see what their vote is on a printout on paper before confirming and casting that vote, and then, you have a paper trail for recounts.

But since we're talking about Ohio, I did volunteer four days of my time to go to Ohio to work on voter turnout. I wasn't at the polling places, but there is a fact that I think has been alluded to, but I think people who weren't in Ohio on that day, at least in the Cleveland area, ought to know: it was raining cats and dogs. And obviously, that's nothing that any of the electoral officials or any of the political parties were controlling.

But I think it's important in this respect: when people say that they were waiting for eight hours, I think it's important to ask were

you inside, were you outside, was there any attempt at any kind of accommodation for people who may have been soaked because they didn't bring an umbrella? I just raise that for, you know, when you're talking to individuals who were there to develop the factual record.

Thank you.

MR. CONYERS: Thank you, Ms. Volmer. We appreciate that.

REV. JACKSON: It rained all day.

MR. CONYERS: It rained mostly all day in most of the state.

MS. BRODSKY: Hi. My name is Ellen Brodsky, and I'm from Broward County, Florida, and I've been representing verified voting in Broward County.

Okay; right now, as we speak right now, the elected officials on the Broward County Commission and our supervisor of elections office are patting themselves on the back about how smooth our election went in Broward County, and that tends to be the general framework where they say

everywhere around the country, if they can't discover, if nothing is apparent, which it is with touch screen machines, with no voter-verified paper ballot.

Now, okay, I have a couple of conclusions listening to everybody and for my own experience already. I just want to let you know that none of the early voting machines in Broward County were there on the day of October 15, 2004, at the logic and accuracy testing to be tested for accuracy; not one. We were supposed to have a 2 percent sampling of all the machines for early voting and for November 2.

Now, we had one location in Broward that had to be shut down because the machines malfunctioned. The county was very lax in taking the public count from the voting machines and comparing it to the voter certificates. So we don't really know exactly how many people actually voted on these early voting machines.

So, therefore, when you say, well, Kerry didn't do so well, you know, in Broward as

anticipated, if you don't test the machines properly to even know if they're functioning--

MR. CONYERS: Absolutely, but, you know, I understand this, and our colleague, Bob Wexler, is going to be--I'm assigning him to work with you very carefully on this since--

MS. BRODSKY: Absolutely.

MR. CONYERS: --he is very experienced with the Florida lack of due process in 2000 and 2004.

MS. BRODSKY: Yes, and he is my Congressman also, and I'm very proud of him.

MR. CONYERS: So I thank you for that, but let me get--

MS. BRODSKY: Let me get back to my final analysis of this whole thing. First of all, you have a county that's willing to have the voters vote on machines that weren't tested, which I think is malfeasance. I think that the fact that we had the software after two years, in the 2002 governor's primary, we had 104,000 ballots that were lost because of the same problem that we had

in November 2004, with Amendment 4.

The county was aware that the software had not been fixed. ES&S was aware that the software hasn't been fixed. Yet, they let all the voters--we had 275,000 people that voted in early voting, and I believe in absentee--

MR. CONYERS: Florida's elections have not yet reached a state of perfect that would be acceptable to almost anybody.

MS. BRODSKY: That's very clear.

MR. CONYERS: I think we would agree on that.

MS. BRODSKY: I have one more statement.

MR. CONYERS: And I want to thank you; no, I need our Congressman to be present, and I have to get to the last person behind you, if you do not mind.

MS. BRODSKY: Okay; all I want to say as I say goodbye--

MR. CONYERS: Thank you for your kind--

MS. BRODSKY: --we need to have a citizen canvassing board that actually counts the votes

instead of having these elected officials who are married to the lobbyists and the voting machine companies.

[Applause.]

MR. FISHER: Thank you, Congressman Conyers, Congressman Frank.

My name is Jeff Fisher, and--

MR. CONYERS: What's your question, Jeff?

[Laughter.]

MR. FISHER: My question is simple: on July 27th of this year, while I was running for the House of Representatives, I was presented with information that showed how the election in 2000 was rigged and where it was done and also how it was going to be done in this election and how it was done in a gubernatorial race in Florida.

I did go to the FBI, folks. The agent's name is Jeff Favita, and they have verified it with the Chicago Tribune that they are doing an open investigation in regards to election fraud, not just in Florida but across the country.

MR. CONYERS: Could we get a copy of the

information that you've turned over to the Federal authorities?

MR. FISHER: Contact the FBI, Congressman Conyers. It's all online, too. There's--

MR. CONYERS: Well, I'm not sure if the Federal Bureau of Investigation turns over your information to us. I'd suggest a better way: how about you giving it to us?

MR. FISHER: Well, I've placed almost everything online except the name of the informant himself, because I was told not to.

MR. CONYERS: Well, I will guarantee you this: I will guarantee you a meeting with one of the staff lawyers on our Committee so that we can get to the bottom of that.

MR. FISHER: At that time, I've already been meeting with Joe Sandler, who is with the DNC.

MR. CONYERS: Well, he's not on our Committee.

MR. FISHER: I know he's not on your Committee.

[Laughter.]

MR. FISHER: And I have been trying to get through to your Committee and everybody else in Washington.

MR. CONYERS: Dear friend, I have just guaranteed you a meeting with our staff. Would that be acceptable.

MR. FISHER: I want the world to know what's going on also.

MR. CONYERS: Would that be acceptable?

MR. FISHER: Yes, it's acceptable

MR. CONYERS: I thank you very much. I appreciate your cooperation.

MR. FISHER: I would like to let the people know one piece of information.

[Applause.]

MR. FISHER: If you would like to have more information on this--

MR. CONYERS: And now, just a moment, sir.

MR. FISHER: --I would like you to go to a Website called walkingwithfisher.com.

MR. CONYERS: Just a moment, sir. Wait a minute, sir. The way the Committee operates is

that the Chairman--

MR. FISHER: I know that. I want America to know so their rights are no longer trampled upon; their First Amendment rights are no longer trampled upon. You all swore an oath on a Bible or a Torah saying you would protect, defend and honor the Constitution of the United States of America. Ellen Brodsky, I have worked with for verified voting. I have worked with Election Protection for over two years.

Thank you, Congressman Frank, and I am laying down.

MR. FRANK: Jeff, you're yelling at your friends. Let us move on.

MR. FISHER: I know that, and I apologize.

MR. FRANK: Enough, okay?

MR. FISHER: And everybody knows that I am a progressive Democrat--

MR. FRANK: Thank you.

MR. FISHER: --who is very passionate about his country.

MR. FRANK: For your own--in the interests

of this, please stop now and let us go forward with the rest of the meeting.

MR. FISHER: Thank you, Congressman Frank.

MR. CONYERS: Thank you, sir, very much.

And ladies and gentlemen, this has been--

MR. SCOTT: John, can I say just one more word very quick? It's quick.

MR. CONYERS: Okay; Congressman Scott, very quickly.

MR. SCOTT: As we talk about revisions in balloting, I think the Help America Vote Act did have one good thing, and it protected the rights of disabled voters. We need to make sure if we make any improvements that we don't take a step backwards in terms of disabled voters.

MR. CONYERS: Absolutely not.

On behalf of every member of the Congress that has been here and certainly to all of the witnesses in the two panels and even more to all of the citizens and activists and persons that were interested enough in what happened in 2004 on November 2, I want to give you the heartfelt thanks

of all of the members of Congress who were here.

Would you please give a round of applause to yourselves for making democracy work?

[Applause.]

MR. CONYERS: And on that note, I announce that these hearings are now concluded. Have a happy holiday season, everybody.

[Whereupon, at 1:09 p.m., the hearing adjourned.]